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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–28]

RIN 0579–AA83

Karnal Bunt; Additions to Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; technical amendment.

SUMMARY: In an interim rule published in the **Federal Register** on November 24,1997, we amended the Karnal bunt regulations by adding portions of McCulloch, Mills, and San Saba Counties, TX, to the list of regulated areas and by expanding the boundaries of the regulated areas in La Paz, Maricopa, and Pinal Counties, AZ, due to the detection of Karnal bunt in those areas.

The interim rule contained an error in the Supplementary Information section and an error in a list of fields in the rule portion. This document corrects those errors.

DATES: This amendment is effective November 24, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–016–26, 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. 96–016–26. Comments received may be inspected 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 comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION: In an interim rule published in the **Federal Register** on November 24, 1997 (62 FR 62504–62506, Docket No. 96–016–26), we amended the Karnal bunt regulations in 7 CFR part 301 by adding certain counties in Texas to the list of regulated areas due to the detection of Karnal bunt in those areas. We also expanded the boundaries of regulated areas in certain counties in Arizona for the same reason.

In the Supplementary Information section of the interim rule, we summarized the regulations that apply to these newly regulated areas. Among other things, we stated that "While Karnal bunt host crops may be planted in the surveillance area, they may not be used for seed." We should have said that Karnal bunt host crops may be planted in the surveillance area and may be used for seed within the regulated area if tested and found free from spores and bunted wheat kernels and then treated with fungicide in acccordance with § 301.89–13(d).

Also, the rule portion of the interim rule contained an error in a list of numbered fields designated as restricted areas for regulated articles other than seed in San Saba County, TX. Field number 40113 3301 should not have been listed. Fields numbers 40113 3302 and 40113 3303 should have been listed instead. All these fields belong to the same individual, and the misdesignation stemmed from a paperwork error. We are correcting the error in our list.

List of Subjects in 7 CFR 301

Agricultural commodities, Plant diseases and pests, Quarantine reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.89–3 [Corrected]

2. In § 301.89–3, in paragraph (f), under the heading "Texas", in paragraph (2), under "San Saba County", the number "40113 3301" is removed and the numbers "40113 3302" and "40113 3303" are added in its place.

Done in Washington, DC, this 18th day of December 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–34177 Filed 12–31–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 97–126–1]

Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals; Nonsubstantive Corrections

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding humane handling, care, treatment, and transportation of marine mammals to correct the designations of three footnotes. This action will result in all the footnotes in 9 CFR part 3, "Standards," being numbered consecutively. We are also removing the authority citations that appear unnecessarily in three places in the regulations.

EFFECTIVE DATE: December 23, 1997.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Holmes, Regulatory Coordination Specialist, Regulatory Analysis and Development, Program Planning and Development, APHIS, USDA, 4700 River Road Unit 118, Riverdale, MD 20737–1238; (301) 734–8682.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 3, subpart E (§§ 3.100 through 3.118,

referred to below as the regulations) contain specifications for the humane handling, care, treatment, and transportation of marine mammals. The three footnotes in subpart E are currently designated as footnotes 1, 5, and 2. We are amending the regulations by redesignating those three footnotes as footnotes 6, 7, and 8, respectively. This action will result in all the footnotes in 9 CFR part 3, "Standards," being numbered consecutively.

We are also removing the authority citation that appears at the beginning of subpart E, as well as the authority citation that appears at the beginning of "Subpart F—Specifications for the Humane Handling, Care, Treatment, and Transportation of Warmblooded Animals Other Than Dogs, Cats, Rabbits, Hamsters, Guinea Pigs, Nonhuman Primates, and Marine Mammals" and the authority citation that appears in subpart F just above § 3.136, "Consignments to carriers and intermediate handlers." The authority that applies to all of part 3, including subparts E and F, is cited at the beginning of the part.

Because the changes contained in this rule are nonsubstantive in nature, we have found that notice and public procedure on this rule are unnecessary. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12866 and Executive Order 12988. Finally, this action is not a rule as defined by Pub. L. 96–354, the Regulatory Flexibility Act, and thus, is exempt from the provisions of the Act.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, 9 CFR part 3 is amended as follows:

PART 3—STANDARDS

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

Authority: 7 U.S.C. 2131–2156; 7 CFR 2.22, 2.80, and 371.2(d).

2. The authority citation for "Subpart E—Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals" is removed.

§ 3.100 [Amended]

3. In § 3.100, paragraph (a), footnote 1 and its reference in the text are redesignated as footnote 6.

§ 3.102 [Amended]

4. In § 3.102, paragraph (c), footnote 5 and its reference in the text are redesignated as footnote 7.

§ 3.104 [Amended]

5. In § 3.104, paragraph (b)(1)(i), footnote 2 and its reference in the text are redesignated as footnote 8.

6. The authority citation for "Subpart F—Specifications for the Humane Handling, Care, Treatment, and Transportation of Warmblooded Animals Other Than Dogs, Cats, Rabbits, Hamsters, Guinea Pigs, Nonhuman Primates, and Marine Mammals" is removed.

7. In subpart F, under the undesignated center heading "Transportation Standards", the authority citation is removed.

Done in Washington, DC, this 23rd day of December 1997 .

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–34178 Filed 12–31–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

[Docket No. 97–120–1]

National Poultry Improvement Plan and Auxiliary Provisions; Nonsubstantive Corrections

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the provisions of the National Poultry Improvement Plan (the Plan) to update the address of the Plan's office, which has been moved to a new location. We are also making several nonsubstantive changes to the provisions of the Plan to correct errors or inconsistencies.

EFFECTIVE DATE: December 23, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1498 Klondike Road, Suite 200, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 145 and 147 contain the provisions of the National Poultry Improvement Plan (NPIP), a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. We are making several nonsubstantive changes to those provisions to correct errors or inconsistencies and to reflect: (1) The relocation of the NPIP staff to a new office; (2) the current organizational affiliation of the Veterinary Biologics staff within the Animal and Plant Health Inspection Service (APHIS); and (3) the current edition number and publication date of a textbook referred to in the regulations.

We are also correcting several paragraph references within § 147.11 of the regulations. In a final rule published in the **Federal Register** on March 18, 1994 (59 FR 12795–12805, Docket No. 92–151–2), we amended § 147.11 by redesignating paragraphs (a) through (j) as paragraphs (b)(1) through (b)(10). When we made that change, however, we failed to update several internal references within the section to reflect the redesignation of its paragraphs. We are, therefore, amending § 147.11 to correct those errors.

Because the changes contained in this rule are nonsubstantive in nature, we have found that notice and public procedure on this rule are unnecessary. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12866 and Executive Order 12988. Finally, this action is not a rule as defined by Pub. L. 96–354, the Regulatory Flexibility Act, and thus, is exempt from the provisions of the Act.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Parts 145 and 147

Animal diseases, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 145 and 147 are amended as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

1. The authority citation for part 145 continues to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.22, 2.80, and 371.2(d).

§ 145.14 [Amended]

2. Section 145.14 is amended as follows:

a. In paragraph (a)(1), in both the first sentence and the last sentences, the words "enzyme-labeled" are removed and the words "enzyme-linked" are added in their place, and in footnote 1, the words "Biotechnology, Biologics, and Environmental Protection" are removed and the words "Veterinary Services" are added in their place.

b. In paragraph (b)(1), in the first sentence and in footnote 3, the words "enzyme-labeled" are removed and the words "enzyme-linked" are added in their place.

c. In paragraph (b)(3), the words "of this chapter" are added immediately before the words "shall be used".

§ 145.23 [Amended]

3. Section 145.23 is amended as follows:

a. In paragraph (b)(2)(iii), in the second sentence, the words "of this part" are removed.

b. The words "of this chapter" are added in the following places:

i. In paragraph (c)(1)(ii)(C), immediately after the words "with § 147.8".

ii. In paragraph (e)(1), in the introductory text, immediately after the words "of § 147.26".

iii. In paragraph (e)(1)(ii)(B), immediately after the words "with § 147.8".

iv. In paragraph (e)(3), immediately after the words "in § 147.24(a)".

v. In paragraph (f)(3), immediately after the words "of § 147.26".

vi. In paragraph (g)(3), immediately after the words "of § 147.26".

c. In paragraph (f)(5), the words "in § 145.24(a)" are removed and the words "in § 147.24(a)" are added in their place.

§ 145.33 [Amended]

4. Section 145.33 is amended as follows:

a. In paragraph (b)(2)(iii), in the second sentence, the words "of this part" are removed.

b. The words "of this chapter" are added in the following places:

i. In paragraph (c)(1)(ii)(C), immediately after the words "with § 147.8".

ii. In paragraph (d)(1)(vi), immediately after the words "and § 147.24(b)".

iii. In paragraph (e)(1), in the introductory text, immediately after the words "of § 147.26".

iv. In paragraph (e)(1)(ii)(B), immediately after the words "with § 147.8".

v. In paragraph (e)(3), immediately after the words "in § 147.24(a)".

vi. In paragraph (f)(3), immediately after the words "of § 147.26".

vii. In paragraph (g)(3), immediately after the words "of § 147.26".

viii. In paragraph (i)(1)(v), immediately after the words "and § 147.24(b)".

§ 145.43 [Amended]

5. Section 145.43 is amended as follows:

a. In paragraph (b)(2)(iii), in the second sentence, the words "of this part" are removed.

b. In paragraph (d)(2), the words "enzyme-labeled" are removed and the words "enzyme-linked" are added in their place.

c. In paragraph (d)(2), footnote 5, the words "of this part" are removed.

d. In paragraph (e)(2), in the last sentence, the words "of this chapter" are added immediately after the words "in § 147.6".

§ 145.53 [Amended]

6. In § 145.53(b)(2)(iii), the second sentence is amended by removing the words "of this part".

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

7. The authority citation for part 147 continues to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.22, 2.80, and 371.2(d).

§ 147.5 [Amended]

8. In § 147.5(b), footnote 4 is amended by removing the words "1500 Klondike Road, Suite A–102, Conyers, GA 30207" and adding the words "1498 Klondike Road, Suite 200, Conyers, GA 30094" in their place.

§ 147.6 [Amended]

9. In § 147.6, the last sentence of the introductory text of the section is amended by removing the words "of this part".

§ 147.7 [Amended]

10. Section 147.7 is amended as follows:

a. In footnote 5, the words "2nd Edition" are removed and the words "3rd Edition" are added in their place and the date "1971" is removed and the date "1991" is added in its place.

b. In paragraph (b)(1)(vii), the words "§ 147.6(b) of this part" are removed and the reference "§ 147.6" is added in their place.

c. In paragraph (d)(2), in the introductory text, the words "subparagraphs (d)(2)(i) thru (x) of this paragraph" are removed and the words "paragraphs (d)(2)(i) through (x) of this section" added in their place.

d. In paragraph (d)(2)(viii), the words "(d)(2)(i) thru (vii) of this paragraph" are removed and the words "paragraphs (d)(2)(i) through (vii) of this section" added in their place.

§ 147.8 [Amended]

11. In § 147.8, the introductory text of the section is amended by adding the words "of this chapter" immediately after the words "and § 145.33(e)(1)(ii)(b)".

§ 147.11 [Amended]

12. Section 147.11 is amended as follows:

a. In paragraph (b)(1), in the last sentence, the words "paragraph (g)" are removed and the words "paragraph (b)(7)" are added in their place.

b. In paragraph (b)(4), in the first sentence, the words "paragraph (c)" are removed and the words "paragraph (b)(3) of this section" are added in their place.

c. In paragraph (b)(5), in the second-to-last sentence, the words "paragraph (a)" are removed and the words "paragraph (b)(1)" are added in their place.

d. In paragraph (b)(7), in the last sentence, the words "paragraph (f)" are removed and the words "paragraph (b)(6)" are added in their place.

§ 147.12 [Amended]

13. In § 147.12(a)(3), footnote 11 is amended by removing the words "1500 Klondike Road, Suite A–102, Conyers, GA 30207" and adding the words "1498 Klondike Road, Suite 200, Conyers, GA 30094" in their place.

14. In § 147.12(b)(3)(ii)(A), footnote 12 is amended by removing the words "1500 Klondike Road, Suite A–102, Conyers, GA 30207" and adding the words "1498 Klondike Road, Suite 200, Conyers, GA 30094" in their place.

§ 147.22 [Amended]

15. In § 147.22, paragraph (c) is amended by removing the words "of this chapter".

§ 147.24 [Amended]

16. In § 147.24, paragraphs (b)(3) and (c) are amended by removing the words

"of this chapter" both times they appear.

Done in Washington, DC, this 23rd day of December 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–34179 Filed 12–31–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–271–AD; Amendment 39–10230; AD 97–25–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information that appeared in airworthiness directive (AD) 97–25–06, amendment 39–10230, that was published in the **Federal Register** on December 1, 1997 (62 FR 63622). The error resulted in an advertent omission in reference to acceptable replacement components. This AD, applicable to certain Boeing Model 747 series airplanes, requires disconnection of the electrical connector to the scavenge pump of the center wing tank. This AD also requires a one-time inspection to identify the part number of the electrical connector; and replacement of the pump with a new or serviceable pump, if necessary.

DATES: Effective December 16, 1997.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of December 16, 1997 (62 FR 63622, December 1, 1997).

FOR FURTHER INFORMATION CONTACT: Chris Hartonas, Aerospace Engineer, Systems and Equipment Branch, ANM–130S; or G. Michael Collins, Aerospace Engineer, Propulsion Branch, ANM–140S; FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2864 or (425) 227–2689; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On November 26, 1997, the FAA issued AD 97–25–06, amendment 39–10230 (62 FR 63622, December 1, 1997). The AD requires disconnection of the electrical connector to the scavenge pump of the center wing tank; and a one-time inspection to identify the part number of the electrical connector, and replacement of the pump with a new pump, if necessary.

As published, that AD contained an inadvertent omission in reference to acceptable replacement components. Throughout the preamble and in paragraph (a)(2) of the AD, the FAA required that a replacement scavenge pump be new. However, the FAA intended that a serviceable scavenge pump also be specified as an acceptable replacement component. In all other respects, the original document is correct.

Since no other part of the regulatory information has been changed, the entire final rule is not being republished.

The effective date of the AD remains December 16, 1997.

§ 39.13 [Corrected]

On page 63623, in the second column, paragraph (a)(2) of AD 97–25–06 is corrected to read as follows:

* * * * *

(2) If an electrical connector having a part number other than the correct part number (as specified in the alert service bulletin) is installed: Prior to further flight, replace the scavenge pump with a new or serviceable scavenge pump with an electrical connector having the correct part number (as specified in the alert service bulletin) in accordance with the Accomplishment Instructions of the alert service bulletin.

* * * * *

Issued in Renton, Washington, on December 24, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–34180 Filed 12–31–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121, and 135

Compliance With Parts 119, 121, and 135 by Alaskan Hunt and Fish Guides Who Transport Persons by Air for Compensation or Hire

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice to operators.

SUMMARY: Operators transporting persons or property by air from one location to another for compensation or hire must comply with the regulatory requirements for air carriers and commercial operators. The FAA has not enforced these regulatory requirements consistently throughout the country. In particular, it has not enforced them adequately against Alaskan guides, and many Alaskan guides conducting such operations are not properly certificated under applicable regulations. The FAA expects to provide those guides who do not currently hold the necessary certification a fair opportunity to achieve compliance with the applicable regulations. During 1998, the FAA intends to offer certification clinics for these guides in three Alaskan cities in order to expedite the necessary certification process for the influx of these new operators. This notice is published to emphasize these regulatory requirements.

EFFECTIVE DATE: This notice is effective December 24, 1997.

FOR FURTHER INFORMATION CONTACT: Jerry Paterson, Technical Standards Branch Manager, AAL–230, Federal Aviation Administration, Alaskan Region Headquarters, 222 West 7th Avenue, #14, Anchorage, Alaska 99513, Telephone 907–271–5514 or Kathleen Yodice, Office of the Chief Counsel, AGC–300, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, Telephone 202–267–9956.

SUPPLEMENTARY INFORMATION:

History

In Alaska there are organizations generally referred to as "guides," that offer commercial packages for persons seeking to hunt, fish, and engage in other similar sport activities within the state of Alaska. This industry has grown to be a major economic activity in Alaska contributing directly and indirectly to the livelihood of a significant percentage of the state's population. The use of an aircraft plays a key role in these operations because it is often the guide's only reasonable means of transporting customers. In some instances, these guides transport people by aircraft from airports within the state of Alaska to lodges within the state of Alaska. They often transport persons and supplies to and from lodges and remote hunting and fishing sites within the state of Alaska. As a general rule, the hunting and fishing sites are not easily accessible by any conventional mode of surface transportation. Charges for the flights are usually not separately itemized on a bill, but are usually included in the "package price." Many of the guides conduct only day, VFR operations and

employ only one pilot. Some of these pilots hold the minimum airman certification for flying passengers not for compensation, *i.e.*, a private pilot certificate without an instrument rating, which is not valid for commercial operations. This transportation of persons from one location to another location is transportation by air for compensation or hire, and requirements contained in part 119, and parts 121 or 135, are applicable.

Part 119 contains the certification requirements for operations conducted under part 121 and for operations conducted under part 135. Operation conducted under part 121 or part 135 provide a higher level of safety than those conducted solely under part 91. Alaskan guides providing transportation by air to persons form one point to another point for compensation or hire are acting as air carriers or commercial operators, and each must comply with the applicable requirements of part 121 or part 135, including proper certification of pilots, proper training of pilots, and proper maintenance of aircraft.

In the past, the FAA's Alaskan Region has not enforced part 121 or part 135, as applicable, against those guides who provide transportation by air to persons patronizing their lodges. The Alaskan Region's enforcement, inconsistent with enforcement in the rest of the country, was apparently based, in part, upon a misunderstanding of when an aircraft operation is "merely incidental" to the guide services and upon incorrect analysis of circumstances in which it might be concluded that "no charge" was made for the flight. On the "merely incidental" issue, there appears to have been a misinterpretation of the scope and effect of a 1963 enforcement case involving a registered hunting guide, *Administrator* v. *Marshall,* 39 CAB 948 (1963) (decided on an extremely narrow set of facts that involved a registered guide's single flight from base camp to spot game from the air and return to base camp, with no landing at a point other than the point of takeoff).

This local misunderstanding was not based on any agency interpretation or policy, and it must be corrected. The use of aircraft by a guide who transports customers to and from hunting or fishing sites and from their lodge may not reasonably be viewed as "merely incidental" to the guide's business, even when no separate charge is made for the flights. Rather, it is an integral part of the guide's business to transport the customer to the remote fishing or hunting sites. It is, in fact, transportation of persons from point to point and those persons are paying compensation for the transportation, either by separate charge or by an amount included in a "package price." The transportation by air is itself an integral, major part of the enterprise for profit. Without the transportation by air, the business arrangement would likely not exist. Furnishing transportation by air is a crucial part of the guide's package because there is no alternative, practical, or commercially acceptable way for the customers to get to the lodge or to the remote hunting or fishing sites. The lack of proper enforcement in this situation is contrary to the FAA's consistent interpretation that transportation of persons from point to point, even to remote sites and even when no separate charge is made, is transportation of persons by air for compensation or hire requiring the appropriate commercial FAA certification.

It should not be assumed that all guides operating within the state of Alaska have been operating under part 91 only. On the contrary, many guides have obtained part 121 or part 135 certification and have been operating in compliance with those standards. This notice is intended to ensure improvement in consistently enforcing compliance with, and that all of the guides operate under the stricter and safer aviation standards of, parts 119, 121, and 135, as applicable. As a result, all of the guides will operate under similar high standards and will receive fair and consistent treatment under the Federal Aviation Regulations.

The FAA's statutory and regulatory provisions require that commercial air transportation services are to be conducted under a higher standard of care than air operations that are not conducted for compensation or hire. However, wholly apart from the legal requirements that require operators transporting persons from point to point to comply with parts 119, 121, and 135, as applicable, there are safety concerns as well.

On December 31, 1992, the FAA's Alaskan Regional Flight Standards Division released a Study of Aviation Commercial Guiding Activities Within the State of Alaska. The purpose of the study was to assess the safety of transportation by air associated with commercial hunting, fishing, and guiding activities within the state of Alaska. In that study, the Alaskan Regional Flight Standards Division concluded that those guides who conducted transportation by air solely under part 91 experienced a higher number of accidents and violations of the Federal Aviation Regulations, indicating a lower level of safety associated with those operations. Accordingly, the Alaskan Regional Flight Standards Division recommended taking action to ensure the higher level of aviation safety that is required for commercial operations involving transportation by air that is engaged in by guides.

In May 1994, the National Transportation Safety Board (NTSB) made several safety recommendations to the FAA based on its own study of the Alaskan guide operations. *See* NTSB recommendations A–94–99 and A–94–100. The NTSB studied 29 aircraft accidents involving pilots working in guide operations in Alaska who had been operating only under part 91 and not also under the more stringent standards of part 135. Specifically, the NTSB considered those aircraft accidents that had occurred over a two-year period, from July 4, 1991, to August 31, 1993. The NTSB concluded that because of the large number of accidents and causal factors revealed by the study, there are serious safety problems associated with guides who commercially transport persons from point to point solely under part 91, and that the number of accidents and a review of the legal issues involved warrant action to enhance the level of passenger safety by ensuring that these operations are operated under part 135. THe NTSB observed that "the overall [Alaska flying] operation requires a high degree of knowledge, skill, professionalism, respect for the elements, and a keen awareness of the limitation of the aircraft and one's self."

In November 1995, the NTSB released a Safety Study that superseded its earlier safety recommendations. *See* NTSB Safety Study NTSB/SS–95–03. The NTSB reaffirmed its belief that the requirements of part 135 are needed to provide an enhanced level of safety to guide operations by introducing safety improvements and by facilitating FAA oversight. The NTSB recommended that, by December 31, 1996, the FAA take action that would ensure that the transportation by air services provided by Alaskan guides are conducted under a part 135 level of safety. *See* NTSB recommendation A–95–134.

Regulatory Compliance

To promote uniform compliance under parts 119, 121, and 135, as applicable, those guides carrying persons and/or cargo by air for compensation or hire, who have not done so, must apply for and obtain an air carrier or commercial operating certificate and appropriate operations specifications. 14 CFR 119.5, 119.21, 119.33. These guides are required to

seek and obtain certification under part 119 for operations under part 121 or part 135, as applicable. The FAA anticipates that most guides transporting persons from point to point for compensation or hire will conduct those operations in accordance with the requirements contained within part 135. Qualification to obtain the appropriate part 119 certification principally includes the following:

—*Level of airman certification;* pilots conducting operations under part 135 must hold, at a minimum, a commercial pilot certificate and a Class II medical certificate. 14 CFR 61.3, 135.95, and 135.243. In addition, pilots may be required to hold an instrument rating, except where such a rating is not required under 14 CFR 135.243(d).

—*Training and testing:* each part 135 operator must properly test and keep current the pilots who are used in these operations. 14 CFR 135.97. Subpart G of 14 CFR part 135 prescribes the tests and checks each operator must perform. Subpart H of 14 CFR part 135 prescribes the requirements for establishing and maintaining an approved training program. Those part 135 operators who employ more than one pilot will be required to provide training to those pilots. 14 CFR 135.341.

—*Aircraft requirements:* each part 135 operator must have exclusive use of at least one aircraft, 14 CFR 135.25, and must accomplish annual and 100-hour inspections or comply with an approved inspection program on each of these aircraft, 14 CFR 135.71 and 135.421. Subpart C of 14 CFR part 135 sets forth aircraft and equipment requirements, which must be complied with in addition to those aircraft and equipment requirements under 14 CFR part 91.

—*Maintenance requirements:* each part 135 operator using an aircraft that is type certificated with a seating configuration of 9 seats or less, excluding any pilot seat, shall maintain that aircraft in accordance with 14 CFR parts 43 and 91, and those requirements set forth in subpart J of 14 CFR part 135. Each operator shall comply with the aircraft manufacturer's recommended maintenance program or a program approved by the FAA. 14 CFR 135.421.

—*Periodic surveillance:* each part 135 operator may be subject to periodic inspections of its required records and its facilities. 14 CFR 135.73 and 135.75.

—*Airplane operator security:* each part 135 operator must comply with the applicable security requirements contained within 14 CFR part 108. 14 CFR 135.125.

—*Drug and alcohol testing requirements:* each part 135 operator must establish a drug and alcohol testing program under 14 CFR 135.251 and 135.255.

Compliance Plan

The FAA intends to implement a plan to aid guides and other new part 121 or part 135 operators in obtaining the appropriate part 119 certification in an efficient, expeditious manner. Implementation of this plan is expected to occur during the 1998 calendar year. During the year, the FAA may, of necessity, devote the bulk of its available resources to securing compliance by processing certification applications submitted by persons under this plan. Accordingly, resources that would normally be devoted toward investigation and enforcement may be constrained. The FAA does not expect enforcement actions related to guides operating without proper certification to be a major focus during implementation of the certification plan. However, following this period, FAA resources will be available for a strong enforcement response regarding any guides providing transportation by air for compensation or hire without proper certification. In addition, the FAA expects that resources will be available at that time to permit a special emphasis on investigation and enforcement of compliance with the appropriate certification and operational requirements for those guides who transport persons by air for compensation or hire.

The Alaskan Regional Flight Standards District Offices (FSDOs) intend to hold two informational meetings in three different locations within the State of Alaska. The three Alaskan locations are Anchorage, Fairbanks, and Juneau. The meetings will be held in the spring and in the fall of 1998 in each location, most likely over a weekend. In addition, the FSDOs will provide information and guidance to those guides who contact or visit the FSDOs in Anchorage, Fairbanks, and Juneau. Information concerning the technical requirements will be available at the meetings and at the FSDOs. During the weekend meetings, the FSDOs will be providing personnel who will conduct flight tests and examine documentation and aircraft.

The FAA expects to accept and consider part 119 certification applications from guides during these weekend meetings. The FAA further expects to issue air carrier operating certificates or commercial operating certificates and appropriate operations specifications to the guides when they are determined to be qualified.

Issued in Washington, DC on December 24, 1997.

Guy Gardner,

Associate Administrator for Regulation and Certification.

[FR Doc. 97–34164 Filed 12–31–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8750]

RIN 1545–AV40

General Rules for Making and Maintaining Qualified Electing Fund Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary regulations that provide guidance to a passive foreign investment company (PFIC) shareholder that makes the election under section 1295 (section 1295 election) to treat the PFIC as a qualified electing fund (QEF). This document also contains temporary regulations that provide guidance for shareholders that wish to make a section 1295 election that will apply on a retroactive basis (retroactive election). In addition, this document contains a temporary regulation that provides guidance under section 1291 to a PFIC shareholder that is a tax-exempt organization. Temporary regulations are needed to provide taxpayers additional time to satisfy certain requirements to make the section 1295 election. The text of these temporary regulations also serves as the text of 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.** In addition, this document removes § 1.1291–9(i)(1) of the final regulations, and amends § 1.1297–3T. References to sections 1296 and 1297 in this document are references to sections 1296 and 1297 as in effect before the effective date of section 1122(a) of the Tax Relief Act of 1997.

DATES: These regulations are effective January 2, 1998.

For dates of applicability, see §§ 1.1291–1T(e)(2), 1.1293–1T(a)(2)(ii),

1.1293–1T(c)(3), 1.1295–1T(k), 1.1295–3T(h), and § 1.1297–3T(c)(3) of these regulations.

FOR FURTHER INFORMATION CONTACT: Gayle Novig, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1555. Responses to these collections of information are mandatory.

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 control number.

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 1291, 1293, 1295, and 1297 of the Internal Revenue Code. Sections 1291, 1293, 1295, and 1297 were added by the Tax Reform Act of 1986, effective for taxable years of foreign corporations beginning after December 31, 1986. As originally enacted, the section 1295 election was an election made by the PFIC. The Technical and Miscellaneous Revenue Act of 1988 (TAMRA) amended section 1295, effective for taxable years of foreign corporations beginning after December 31, 1986, to change the section 1295 election to a shareholder-by-shareholder election. Sections 1291, 1293, and 1297 also were amended by TAMRA; sections 1293 and 1297 were further amended by the Omnibus Budget Reconciliation Act of 1993. Section 1297 also was amended by the Revenue Reconciliation Act of 1989 and the Small Business Job Protection Act of 1996. In addition, the Taxpayer Relief Act of 1997 (1997 TRA) amended section 1 to provide categories of long-term capital gain and the maximum rates of tax to which the categories are subject. In certain cases, this amendment affects the calculation of net capital gain for purposes of section 1293.

Guidance for making the election under section 1295 was first provided on March 2, 1988, in the **Federal Register** (53 FR 6770), with the publication of temporary regulations (TD 8178) relating to the section 1295 election. These temporary regulations provided guidance to PFICs making the section 1295 election and therefore became obsolete with the 1988 amendment to section 1295. The Internal Revenue Service published Notice 88–125, 1988–2 C.B. 535, to provide guidance to shareholders making the section 1295 election under section 1295, as amended. Notice 88–125 was an administrative pronouncement, as that term is used in § 1.6661–3(b)(2) of the Income Tax Regulations, and taxpayers could rely on Notice 88–125 to the same extent as a revenue ruling or a revenue procedure. Notice 88–125 stated that taxpayers could rely on the notice until regulations were published, and that those regulations would be effective for taxable years beginning after December 31, 1986.

Proposed regulations published April 1, 1992 (57 FR 11024), provide a general rule regarding the application of section 1291 to a PFIC shareholder that is an organization exempt from tax under chapter 1. In addition, these proposed regulations provide general rules regarding the application of section 1293 and special rules regarding the application of section 1295, including rules with respect to transfers of PFIC stock subject to a section 1295 election. Proposed regulation § 1.1295–2, published December 24, 1996 (61 FR 67752), permits certain shareholders to make a special section 1295 election with respect to certain preferred stock. Proposed regulation § 1.1293–2, also published December 24, 1996 (61 FR 67752), provides the special inclusion rules applicable to shareholders that make the special section 1295 election with respect to their preferred stock.

Temporary regulations § 1.1297–3T, published March 2, 1988 (53 FR 6770), provides guidance for making the deemed sale election under section 1297(b)(1) to purge the PFIC taint from stock of a foreign corporation that is treated as stock of a PFIC under section 1297(b)(1). Section 1.1291–9(i)(1) of the regulations, published December 27, 1996 (61 FR 68149), provides that the deemed dividend election rules of § 1.1291–9 do not apply to elections made under section 1297(b)(1). A similar rule had been provided in temporary regulations published April 1, 1992 (52 FR 10992). The temporary regulations, which had been effective April 1, 1992, sunset April 1, 1995.

Treasury and the Service believe that immediate guidance in the form of temporary regulations regarding the section 1295 election is necessary. First, the regulations provide significant new QEF election procedures that are beneficial to taxpayers. For example, the regulations provide procedures for both retroactive and protective elections. The benefits provided by these changes may be jeopardized, or simply unavailable (as a result of closed taxable years), if taxpayers cannot immediately rely on them. Second, although the regulations embody guidance already provided in Notice 88–125, the regulations significantly reduce the burden for making and maintaining the election and clarify, most often in favor of taxpayers, significant ambiguities left by the Notice. Treasury and the Service believe that the benefits of immediate guidance significantly outweigh any advantage obtained by issuing the regulations in proposed form only because these temporary regulations prevent prejudice to taxpayers as a consequence of a further delay in guidance and because they benefit taxpayers by providing additional time to make certain elections. Finally, the temporary regulations provide guidance concerning the manner in which section 1(h), which was added to the Code by 1997 TRA, effective for taxable years ending after May 6, 1997, applies to determine the net capital gain of the PFIC and the QEF shareholder's pro rata share of the net capital gain. Therefore, it would be impractical and contrary to public interest to issue this Treasury decision with prior notice under section 553(b) of title 5 of the United States Code.

Explanation of Provisions

A foreign corporation is a passive foreign investment company (PFIC) for a taxable year if the foreign corporation satisfies either the income or asset test of section 1296(a) for that year. A foreign corporation is a PFIC under the income test if 75 percent or more of its gross income for its taxable year is passive, or investment-type, income.

Alternatively, under the asset test, a foreign corporation is a PFIC if 50 percent or more of the average fair market value of its assets during its taxable year are assets that produce or are held for the production of passive income. A shareholder of a foreign corporation that qualifies as a PFIC is subject to the interest charge regime of section 1291 with respect to certain distributions by the PFIC and certain dispositions of its stock. Generally, a shareholder may avoid the interest charge regime by making a timely election under section 1295 to treat a PFIC as a QEF, in which case the shareholder will be taxable annually under section 1293 on its pro rata shares of the ordinary ordinary earnings and net capital gain of the PFIC. Under section 1295(a), a section 1295 election will apply with respect to the PFIC if the PFIC complies with requirements prescribed by the Secretary for purposes of determining the ordinary earnings and net capital gain of the PFIC and otherwise carrying out the purposes of the PFIC provisions.

Section 1295(b)(1) provides that a shareholder may make a section 1295 election with respect to a PFIC for any taxable year of the shareholder (shareholder election year). Once made, the election will apply to that year and to all subsequent years of the shareholder unless revoked with the consent of the Secretary. Section 1295(b)(2) prescribes the time for making the election. In general, for the section 1295 election to be applicable to a taxable year, the shareholder must make the election by the due date, as extended under section 6081, for the shareholder's return for that taxable year. However, to the extent provided in regulations, a section 1295 election may be made for a taxable year after the time required if the shareholder failed to make a timely election because the shareholder reasonably believed that the foreign corporation was not a PFIC.

This document provides temporary regulations that interpret sections 1291, 1293, 1295, and 1297. In particular, the temporary regulations incorporate the rules of Notice 88–125, with certain modifications. The temporary regulations also clarify the rules of the notice and proposed regulation § 1.1295–1(b) with respect to the application of section 1295 to options, lapse of PFIC status, cessation of ownership of PFIC stock, transfer of stock subject to a section 1295 election to a pass through entity, and tax-exempt organizations. The temporary regulations also provide rules regarding invalidation, termination and revocation of a section 1295 election. In addition, the temporary regulations introduce rules for making a retroactive election. Finally, the temporary regulations provide guidance concerning the application of the deemed dividend election rules to elections under section 1297(b)(1).

1. Rules of Notice 88–125

Temporary regulation § 1.1295–1T(c) through (g) adopts the rules provided in Notice 88–125, with certain modifications. These modifications reflect certain comments received with respect to the notice.

Notice 88–125 describes the requirements a shareholder must satisfy to make and maintain a section 1295 election. In particular, each year the shareholder must file Form 8621 with its income tax return and attach a PFIC Annual Information Statement (described below). In the year of election, the shareholder also must attach a Shareholder Election Statement. Notice 88–125 requires satisfaction of the election and annual reporting requirements with respect to each PFIC for which the shareholder makes the section 1295 election.

Commenters indicated that these election and annual reporting requirements are burdensome, especially if the shareholder is making the election with respect to many foreign corporations. In response to the comments, the temporary regulations change these requirements to reduce the burden on the electing shareholder. First, the temporary regulations eliminate the need to file a Shareholder Election Statement. Second, the temporary regulations eliminate the need to file a copy of the PFIC Annual Information Statement with Form 8621 and require instead that the shareholder retain a copy of the PFIC Annual Information Statement for production upon examination by the Service. Thus, to make and maintain a section 1295 election, the shareholder need only file Form 8621 for each PFIC on an annual basis and maintain records to support the information entered on that form.

Notice 88–125 imposes certain requirements on PFICs and on intermediaries through which shareholders own PFIC stock. The notice requires a PFIC to provide its shareholders with a PFIC Annual Information Statement containing information necessary to determine each shareholder's yearly income inclusion. In the case of indirect ownership of PFIC stock, a nominee or shareholder of record that has received a PFIC Annual Information Statement may issue its own statement to the shareholder containing the relevant information in lieu of passing on the PFIC Annual Information Statement.

The temporary regulations allow PFICs and intermediaries more flexibility in fulfilling these requirements. A PFIC that owns directly or indirectly any shares of one or more PFICs may provide its shareholders with a PFIC Annual Information Statement in which it combines the required information and representations of the PFIC and any lower tier PFICs. The PFIC may use any format for a combined PFIC Annual Information Statement provided the required information and representations are clearly presented and identified with the respective corporations. Similarly, an intermediary through which a shareholder indirectly holds stock in more than one PFIC may provide the shareholder a combined statement based on multiple PFIC Annual Information Statements. Comments are requested concerning alternative reporting methods that could further reduce the burden on electing shareholders.

As provided in Notice 88–125, the PFIC Annual Information Statement must include the shareholder's pro rata shares of the ordinary earnings and net capital gain of the PFIC for the PFIC's taxable year or information that will enable the shareholder to calculate its pro rata shares. In addition, the PFIC Annual Information Statement must contain information about distributions to shareholders and a statement that the PFIC will permit the shareholder to inspect and copy its permanent books of account, records, and other documents of the PFIC necessary to determine that the ordinary earnings and net capital gain of the PFIC have been calculated according to federal income tax accounting principles. Commenters indicated that it was unclear in the notice whether a shareholder, rather than the PFIC, could calculate the requisite federal income tax information with respect to a PFIC that did not keep its books and records according to U.S. Tax accounting rules. In response to the comments, the temporary regulations clarify that a shareholder may obtain the books, records and other documents of the foreign corporation necessary for the shareholder to determine the correct earnings and profits and net capital gain of the PFIC according to federal income tax principles and calculate the shareholder's pro rata shares of the PFIC's ordinary earnings and net capital gain. The temporary regulations provide that, in that case, the PFIC must include a statement in its PFIC Annual Information Statement that it has permitted the shareholder to examine the PFIC's books of account, records,

and other documents necessary for the shareholder to calculate the amounts of ordinary earnings and net capital gain.

Notice 88–125 provides that a domestic partnership makes the section 1295 election rather than each individual partner that is an indirect shareholder of the PFIC by reason of the partner's interest in the partnership. The notice also provides that an S corporation makes the section 1295 election. This entity-level election in the case of domestic partnerships and S corporations reflects the view that multiple elections by the partners or S corporation shareholders would be more burdensome than the single entity-level election. The temporary regulations adopt the rules of the notice with respect to elections by domestic pass through entities, clarifying that the section 1295 election with respect to stock owned directly or indirectly by a domestic trust or estate generally is also made at the entity level. The temporary regulations also adopt the rules of the notice with respect to interests held by foreign pass through entities. Interest holder in foreign partnerships, trusts, and estates must make the section 1295 election with respect to their indirect interests in PFICs held through those entities; foreign entities may not make the section 1295 election.

Partnerships, S corporations, trusts, and estates are referred to as pass through entities in the temporary regulations. The regulations clarify that an election made by a domestic pass through entity is made in the pass through entity's capacity as a shareholder, as specially defined in temporary regulation § 1.1295–1T(j) for purposes of the section 1295 election provisions. Thus, the domestic pass through entity takes the section 1293 inclusion into account in its return for the year in which or with which the PFIC's taxable year ends, and the interest holders in the pass through entity take the section 1293 inclusion into account under the rules applicable to inclusions of income from the pass through entity. In addition, the temporary regulations clarify that if an interest holder in a domestic pass through entity transfers stock of a PFIC subject to a section 1295 election to the pass through entity, the section 1295 election continues to apply to the interest holder whether or not the pass through entity makes the section 1295 election.

Similarly, the temporary regulations clarify the effect of the termination under section 708(b) of a partnership on a section 1295 election made by the partnership. Section 1.1295–1T(b)(3)(iii) provides that, notwithstanding the termination of section 1295 election when a partnership terminates, the partners of the former partnership that are partners of the new partnership are bound by the section 1295 election made by the former partnership whether or not the new partnership makes a section 1295 election.

Notice 88–125 does not provide any special rules concerning tax-exempt entities. As provided in proposed regulations under section 1291 (see Regulation Project INTL–656–87, published at 1992–1 C.B. 1124), section 1291 and the regulations under section 1291 apply to a tax-exempt organization that is a shareholder of a PFIC that is not a pedigreed QEF, within the meaning of § 1.1291–9(j)(2)(ii), only if a dividend from the PFIC would be taxable to the organization under subchapter F. Section 1.1291–1T(e) of these temporary regulations provides the same rule. To prevent such a tax-exempt organization from being subject to an unnecessary section 1295 election that may have adverse consequences to the tax-exempt entity (*e.g.*, an excise tax on gross investment income of a private foundation that arises as a consequence of a section 1295 election), the temporary regulations provide a rule that precludes a tax-exempt entity that is not taxable with respect to dividends from a PFIC from making a section 1295 election with respect to that PFIC or from being subject to a pass through entity level election.

Commenters indicated that Notice 88–125 is unclear about which taxable year of the PFIC is the first taxable year to which the section 1295 election applies. Temporary regulation § 1.1295–1T(c)(2) clarifies that the section 1295 election is effective with respect to the taxable year of the foreign corporation that ends during the shareholder's election year. Because certain shareholders may have misinterpreted Notice 88–125, the Commissioner will respect a section 1295 election made prior to February 2, 1998 that was intended to be effective for the taxable year of the PFIC that began during the shareholder's election year provided that it is clear from all the facts and circumstances that the shareholder intended the election to be effective for that taxable year of the foreign corporation. For example, a calendar year shareholder that made the section 1295 election in its 1995 return with respect to a foreign corporation whose taxable year began in 1995 and ended in 1996, with the intention that the election first apply to the foreign corporation's taxable year ended in 1996, will be treated as having made a valid section 1295 election with respect to that year.

2. Additional Clarifications

A. Options

Options with respect to PFIC stock present unique problems under section 1295. Section 1297(a)(4) provides that, under regulations, an option to acquire stock may be treated as ownership of stock.

Proposed regulations under section 1291 (see Regulation Project INTL–656–87, published in 1992–1 C.B. 1124) provide that options are treated like stock for purposes of section 1291. Under proposed regulation § 1.1291–1(d), an option is considered to be stock of a PFIC that is not a pedigreed QEF for purposes of applying section 1291 to a disposition of the option, unless the holder of the actual stock which is subject to the option is currently including income from the stock under section 1293. Under proposed regulation § 1.1291–1(h)(3), the holding period of stock acquired upon exercise of an option treated as stock under § 1.1291–1(d) includes the period the option was held. These rules recognize that the value of an option is linked to the value of the underlying stock and therefore such an option should be subject to the PFIC rules.

Because of the potential for application of section 1291 to options or stock acquired upon exercise of options, some option holders have requested that regulations provide rules for making a section 1295 election with respect to an option. Application of a section 1295 election and the section 1293 current inclusion regime to options would present serious computational issues and would be administratively burdensome. Therefore, the temporary regulations continue the rule that any shareholder's section 1295 election with respect to stock of a PFIC does not apply to options to acquire stock of the PFIC and that an option holder may not make a section 1295 election with respect to the optioned stock. Accordingly, if a shareholder of stock subject to a section 1295 election exercises an option to purchase additional shares of stock of that PFIC, the stock received will be subject to the section 1295 election made by the shareholder, but, because of the rules of proposed regulation § 1.1291–1(h)(3), the stock may be treated as stock of an unpedigreed QEF.

Comments are requested concerning the option rule. In particular, comments are requested that identify any administratively feasible mechanisms that would permit a shareholder to make a section 1295 election that will apply to options.

B. Section 1295 Election Made in a Joint Return

Section 1.1295–1T(b)(4) of the temporary regulations clarifies the application of a section 1295 election made in a joint return within the meaning of section 6013. The temporary regulations provide that a section 1295 election made in a joint return will be treated as having been made by both spouses that join in the filing of that return.

C. Lapse in PFIC Status or in Ownership

Section 1.1295–1T(c)(2) of the temporary regulations clarifies the status of a shareholder's section 1295 election with respect to a foreign corporation after the foreign corporation ceases to be a PFIC and a QEF, or after the shareholder ceases to be a shareholder of the PFIC. In general, once a section 1295 election is made with respect to a corporation, it remains in effect, although not applicable, during those years that the foreign corporation is not a PFIC. Therefore, if the corporation requalifies as a PFIC, the section 1295 election previously made is still valid, and the shareholder is required to satisfy the requirements of that election. Furthermore, as indicated in H.R. No. 795, 100th Cong., 2d Sess., at 567 (1988), an election remains in effect with respect to a shareholder, although dormant, after a shareholder disposes of its entire interest in the PFIC. Upon the shareholder's reacquisition of a interest in the PFIC, the section 1295 election will apply to the newly acquired stock.

D. Invalidation, Termination, and Revocation of Section 1295 Elections

As provided in temporary regulation § 1.1295–T(i)(1), the Commissioner has discretion to invalidate or terminate a section 1295 election if the shareholder or the QEF fails to satisfy the section 1295 election requirements. However, intentional failure to satisfy the section 1295 election requirements will not automatically result in invalidation or termination. If the Commissioner invalidates a section 1295 election, the shareholder will be treated as if it never made a section 1295 election with respect to the PFIC. If the Commissioner terminates a section 1295 election for a taxable year, the section 1295 election will be valid for all taxable years before that year, but inapplicable to that year and all subsequent taxable years.

Once a shareholder makes a section 1295 election, the shareholder may revoke its section 1295 election only with the consent of the Commissioner. Temporary regulation § 1.1295–1T(i)(2) provides the rules for requesting consent to revoke an election.

The effects of an invalidation, termination, or revocation of a section 1295 are provided in § 1.1295–1T(i)(3) of the temporary regulations. In the Commissioner's discretion, stock of a foreign corporation, with respect to which the section 1295 election is invalidated, terminated, or revoked will be treated as sold as of the last day of the PFIC's last taxable year as a QEF. The Commissioner also has the discretion to impose any other terms and conditions that the Commissioner deems necessary to ensure a shareholder's compliance with sections 1291 through 1297. In addition, revocation will terminate all section 1294 elections.

Section 1.1295–1T(i)(4) of the temporary regulations permits a shareholder to make another section 1295 election with respect to the PFIC after the fifth taxable year following the invalidation, termination, or revocation. However, the shareholder may request consent to make the section 1295 election for an earlier taxable year.

3. Section 1293

The temporary regulations provide guidance to PFICs concerning the application of section 1(h) to section 1293 and the calculation of net capital gain. Section 1.1293–1T(a)(2) of the temporary regulations provides three alternatives for a QEF to calculate and report net capital gain. First, the PFIC may calculate and report to its shareholders the amount of each category of long-term capital gain provided in section 1(h). Alternatively, the PFIC may determine and report a single amount of net capital gain, stating that that amount of long-term capital gain is subject to the highest capital gain rate of tax applicable to the shareholder. Under the third option, the PFIC may treat the total of its earnings and profits for the taxable year as ordinary earnings. The provision of these options is intended to simplify compliance with the requirements of sections 1293 and 1295. It is anticipated that, without providing these options, some PFICs would not be willing or able to calculate the categories of net capital gain required by section 1(h) and therefore would not provide the information necessary for a QEF shareholder to maintain a valid section 1295 election. A shareholder that has access to information necessary to calculate its pro rata share of the PFIC's ordinary earnings and net capital gain may also use any of these options. The Service requests comments about how net capital gain should be calculated, especially in light of the 1997 Act changes to section 1.

The temporary regulations under section 1293 also clarify the application of the current inclusion rules of section 1293 to interests in a QEF held through a domestic pass through entity. The temporary regulations provide generally that a U.S. person that is a shareholder of the QEF by reason of an interest in a domestic pass through entity takes into account its pro rata shares of the ordinary earnings and net capital gain of the QEF attributable to the QEF shares held by the pass through entity according to the general rules applicable to inclusions of income from the pass through entity.

4. Exempt organizations subject to section 1291

As stated above, the temporary regulations include the rule of proposed regulation § 1.1291–1(e). Under temporary regulation § 1.1291–1T(e), if the shareholder of a PFIC is an organization exempt from tax under this chapter (including an Individual Retirement Account (IRA)), section 1291 and these regulations apply to such shareholder only if a dividend from the PFIC would be taxable to the organization under subchapter F.

5. Effective Dates of Temporary Regulations §§ 1.1291–1T(e), 1.1293–1T(a)(2), 1.1293–1T(c) and 1.1295–1T

As stated above, Notice 88–125 provides that the notice's rules will be provided in regulations applicable to taxable years beginning after 1986. However, because the temporary regulations do not adopt the rules of Notice 88–125 in their entirety, the temporary regulations will not be retroactively applied. Therefore, § 1.1295–1T(c) through (j) will apply to taxable years of shareholders beginning after December 31, 1997. As provided in § 1.1295–1T(h), the Internal Revenue Service will honor taxpayer reliance on Notice 88–125 for taxable years beginning after December 31, 1986, and before January 1, 1998. Thus, if a person made a valid section 1295 election under the rules of Notice 88–125 for taxable years beginning before January 1, 1998, and, for those taxable years, complied with the rules of the notice relating to maintaining that election, the election remains in effect for taxable years beginning after December 31, 1997. However, elections made under Notice 88–125, as well as elections made under these temporary regulations, must be maintained as provided in the temporary regulations.

Temporary regulation § 1.1291–1T(e) will apply on and after April 1, 1992.

Section 1.1293–1T(a)(2) of the temporary regulations will apply to sales by QEFs during their taxable years ending on or after May 7, 1997. Temporary regulation §§ 1.1293–1T(c) and 1.1295–1T(b)(2)(iii), (b)(3), and (b)(4) will apply to taxable years of shareholders beginning after December 31, 1997.

6. Retroactive Section 1295 Elections

a. In General

Section 1295(b)(2) provides that, to the extent provided in regulations, a shareholder may make a section 1295 election with respect to a foreign corporation later than the election due date if the shareholder failed to make a timely section 1295 election because the shareholder reasonably believed that the foreign corporation was not a PFIC. In temporary regulation § 1.1295–3T, Treasury and the Service interpret section 1295(b)(2) to permit a shareholder of a PFIC to make a retroactive election in certain limited circumstances where the shareholder possessed reasonable belief that the corporation was not a PFIC or the shareholder demonstrates that it reasonably relied on the advice of a qualified tax professional.

As described below, the temporary regulations set forth two distinct sets of rules for making a retroactive election. Under the first set of rules, a shareholder of a PFIC that meets certain conditions may make a retroactive election without obtaining the consent of the Commissioner (protective regime). A shareholder may make a retroactive election under the protective regime only if the shareholder possessed reasonable belief as of the election due date that the foreign corporation was not a PFIC. A shareholder of a PFIC may make a retroactive election under the protective regime even after the issue of PFIC status has been raised in an audit by the Service.

Under the second set of rules, a shareholder may make a retroactive election only after obtaining the Commissioner's consent (consent regime). To make a retroactive election under the consent regime, the shareholder must demonstrate, to the satisfaction of the Commissioner, that the shareholder's failure to make a timely section 1295 election resulted from the shareholder's reasonable reliance on the advice of a qualified tax professional. A shareholder of a PFIC may not make a retroactive election under the consent regime unless the shareholder files a request for consent before the issue of PFIC status is raised on audit.

The temporary regulations provide the exclusive rules for making a retroactive election. Thus, a shareholder that does not satisfy the requirements of the temporary regulations may not seek relief under any other provision of the law, including § 301.9100 regulations. Although such a shareholder may not make a retroactive election, the shareholder may be able to attain certain benefits associated with a retroactive election by making a section 1295 election for the current year together with a purging election under section 1291(d)(2).

b. Protective Regime

A shareholder that satisfies the requirements of the protective regime may make a retroactive election under the rules of temporary regulation § 1.1295–3T(c) through (e) without obtaining the Commissioner's consent. This regime requires that the shareholder possess reasonable belief, contemporaneous with the election due date, that the foreign corporation was not a PFIC.

The legislative history of section 1295 suggests that in certain circumstances a shareholder that reasonably believed that a foreign corporation was not a PFIC for a taxable year (*e.g.*, based on a reasonable valuation of the corporation's assets) may make a retroactive election if the Service determines, upon examination, that the corporation was in fact a PFIC for such taxable year (*e.g.*, based on the Service's valuation of the corporation's assets for the taxable year). Consistent with the legislative history, temporary regulation § 1.1295–3T(c) through (e) permits a shareholder to make a retroactive election for a taxable year of the shareholder (retroactive election year), even if the Service raises the PFIC status of the corporation upon audit. Although the shareholder need not request the Service's consent to make a retroactive election under this regime, the shareholder must satisfy certain conditions to make a retroactive election.

First, except for certain small shareholders, the shareholder must be able to establish that the shareholder reasonably believed, within the meaning of temporary regulation § 1.1295–3T(d), as of the election due date, that the foreign corporation was not a PFIC. Temporary regulation § 1.1295–3T(d) interprets the reasonable belief standard to require an actual determination by the shareholder, based on a good faith application of the law, that a foreign corporation was not a PFIC. Therefore, to satisfy the reasonable belief requirement, the shareholder must know and understand the PFIC provisions, and must make a good faith effort to apply the income and asset tests of section 1296 to determine whether the foreign corporation is a PFIC.

Except for certain small shareholders, a shareholder must file a single Protective Statement pursuant to temporary regulation § 1.1295–3T(c) that applies to a taxable year to preserve the shareholder's ability to make a retroactive election with respect to such taxable year of the shareholder and subsequent taxable years. The Protective Statement must contain information describing the basis for the shareholder's conclusion as of the election due date that the foreign corporation was not a PFIC for its taxable year that ended in the first taxable year of the shareholder for which the Protective Statement applies. As part of the Protective Statement, the shareholder must extend the periods of limitations for the assessment of taxes determined under sections 1291 through 1297 (PFIC related taxes) for all taxable years to which the Protective Statement will apply, as provided in § 1.1295–3T(c)(4) of the temporary regulations. The shareholder also must include certain additional information in the Protective Statement. A special transition rule permits shareholders to use the protective regime for taxable years ending prior to January 2, 1998 provided the periods of limitations on the assessment of taxes for such years have not expired.

Temporary regulation § 1.1295–3T(e) provides special rules for certain small shareholders. A shareholder that qualifies under § 1.1295–3T(e) for a taxable year will not be required to satisfy the reasonable belief requirement or file a Protective Statement to preserve the shareholder's ability to make a retroactive election with respect to such year (a qualified shareholder).

Except as provided below, a shareholder is a qualified shareholder only if the shareholder owns, directly, indirectly or constructively, less than two percent of the vote and value of each class of stock of the foreign corporation during such year, and has not filed a Protective Statement that applies to an earlier year included in the shareholder's holding period of stock of the foreign corporation. In addition, for the special rule to apply to a taxable year of the shareholder, the foreign corporation or its U.S. counsel must have indicated in a corporate filing, shareholder mailing or similar document that the foreign corporation reasonably believed that it was not a PFIC for the taxable year of the foreign

corporation that ended with or within such taxable year of the shareholder. However, no shareholder will be a qualified shareholder if the shareholder knew that the corporation was in fact a PFIC or knew or had reason to know that a corporate filing relating to the corporation's PFIC status was inaccurate. For this purpose, a shareholder will be treated as knowing that the corporation was in fact a PFIC if the principal activity of the foreign corporation is owning or trading a diversified portfolio of stock, securities, or other financial contracts. A qualified shareholder that makes a valid retroactive election in its earliest open taxable year in which the foreign corporation is a PFIC may, subject to certain conditions, be treated as a shareholder of a pedigreed QEF even if the period of limitations for the assessment of taxes for an earlier taxable year in which the corporation qualified as a PFIC has expired.

c. Consent Regime

Certain taxpayers have urged the Service to interpret the reasonable belief requirement of section 1295(b)(2) to allow a shareholder to make a retroactive election if the shareholder or its tax adviser did not know or properly apply the PFIC rules. In particular, certain taxpayers have recommended adoption of the reasonable action and good faith standard of § 301.9100 regulations for demonstrating reasonable belief.

Treasury and the Service recognize that the PFIC rules are complex and, in some cases, difficult for shareholders to apply. Accordingly, the temporary regulations provide that, in certain limited circumstances, a shareholder may obtain the Commissioner's consent to make a retroactive election, even if the shareholder failed to know or properly apply the PFIC rules in the earlier year. Under temporary regulation § 1.1295–3T(f), a shareholder that reasonably relied on the advice of a qualified tax professional may request consent to make a retroactive election.

In response to taxpayer comments, Treasury and the Service have incorporated into the consent regime certain rules set forth in § 301.9100 regulations. As described below, temporary regulation § 1.1295–3T(f)(1) and (4), respectively, require the shareholder to have reasonably relied on a qualified tax professional and to document such reliance. The Service will not grant consent under this regime if doing so would prejudice the interests of the government by placing the shareholder in a position more favorable then if the shareholder had made the section 1295 election on a timely basis. The temporary regulations provide that in certain cases the interests of the government may be preserved by a closing agreement between the Service and the shareholder requiring the shareholder to make a payment to the government that compensates the government for amounts that would have been due in respect of closed years affected by the retroactive election.

Under temporary regulation § 1.1295–3T(f)(2), the Service will treat a shareholder as having reasonably relied on a qualified tax professional (including an employee of the shareholder), within the meaning of the § 301.9100 regulations, if the qualified tax professional failed to identify the corporation as a PFIC or failed to advise the shareholder of the consequences of making, or failing to make, a section 1295 election. Therefore, if a qualified tax professional, due to ignorance of the law or negligence, failed to identify the corporation as a PFIC or failed to advise the shareholder of the consequences of making, or failing to make, the section 1295 election, the Commissioner may consent to a retroactive election. However, in no event will the Commissioner consent to a retroactive election if, prior to the application for such consent, the Service has raised the PFIC status of the foreign corporation in an audit of the retroactive election year or any subsequent year. Furthermore, a shareholder may not disregard knowledge that the corporation was a PFIC or advice or knowledge relating to the tax consequences of owning stock of a PFIC and then request relief under this regime.

d. Who Makes a Retroactive Election and Who Satisfies the Requirements of the Protective or Consent Regime

Temporary regulation § 1.1295–3T adopts the rules of temporary regulation § 1.1295–1T(d), relating to who may make a section 1295 election, for purposes of determining the appropriate person to satisfy the requirements of the protective or consent regime and to make a retroactive election. Consistent with these rules, temporary regulation § 1.1295–3T(c)(3) provides that the person that executes and files the Protective Statement under the protective regime is the person that makes the section 1295 election, as provided in § 1.1295–1T(d). Temporary regulation § 1.1295–3T(f)(4)(vi) sets forth a similar rule for requests for consent under the consent regime. In addition, temporary regulation § 1.1295–3T(g)(3) provides for an entity-level retroactive election in the case of domestic partnerships, S corporations, domestic nongrantor trusts, and domestic estates that own stock of a PFIC, and a partner or beneficiary-level retroactive election in the case of foreign partnerships, foreign trusts, domestic grantor trusts, and foreign estates that own stock of a PFIC.

The Service welcomes comments concerning the benefits of requiring certain entities, rather than their interest holders, to satisfy the requirements under the protective and consent regimes. In particular, comments are requested concerning whether requiring S corporations, domestic nongrantor trusts, and domestic estates to satisfy the requirements of the protective regime at the entity-level is inappropriate.

e. Making a Retroactive Election

A shareholder that has satisfied the requirements of the protective regime or has obtained the consent of the Commissioner under the consent regime must comply with the rules in temporary regulation § 1.1295–3T(g) for making a retroactive election. In general, the shareholder must file an amended return for the retroactive election year in which the shareholder complies with the requirements for making a section 1295 election, report its pro rata shares of the ordinary earnings and net capital gain of the foreign corporation for that year (section 1293 inclusion), if any, and pay any taxes resulting from the redetermination of its income and any applicable section 6621 interest. The shareholder also must file amended returns for the taxable years that follow the retroactive election year in which the foreign corporation is a PFIC and a QEF to report the section 1293 inclusion for each of these years, and pay the resulting tax and section 6621 interest. If the shareholder's taxable year in which the corporation first qualified as a PFIC, or the retroactive election year or any subsequent taxable years, are closed for the assessment of PFIC related taxes (*i.e.*, in certain cases where the shareholder is a qualified shareholder or the shareholder has obtained the consent of the Commissioner to file a retroactive election), the shareholder must file amended returns to report section 1293 inclusions in all open affected years beginning with the first taxable year open for the assessment of tax on such amounts.

7. Removal of § 1.1291–9(i)(1)

Section 1121 of the 1997 TRA amends section 1296, adding section 1296(e). Section 1296(e) provides that after December 31, 1997, a controlled foreign corporation (as defined in section

957(a)) (CFC) will not be treated as a PFIC with respect to a U.S. shareholder (as defined in section 951(b)) of the CFC. After a shareholder ceases to qualify for this exception, because the shareholder creases to be subject to subpart F, generally the shareholder will have a new holding period for purposes of the PFIC provisions pursuant to section 1296(e)(3)(A). However, pursuant to section 1296(e)(3)(B), if the foreign corporation was a nonqualified fund before the shareholder qualified for this exception, and the shareholder did not make the section 1297(b)(1) election to purge the stock of its PFIC taint, the shareholder will not get a new holding period when it ceases to qualify for the exception for U.S. shareholders of CFCs. Congress, in the Conference Report to the 1997 TRA, H.R. Rept. 105–220, 105th Congress, 1st session, at 625, stated that "the stock held by such shareholder continues to be treated as PFIC stock unless the shareholder makes an election to pay tax and an interest charge with respect to the unrealized appreciation in the stock or the accumulated earnings of the corporation." Congress thus indicated its intent that a shareholder may apply the rules of either section 1291(d)(2)(A), the deemed sale election, or section 1291(d)(2)(B), the deemed dividend election, when making the section 1297(b)(1) election to purge a former PFIC of its PFIC taint. In order to give effect to that intent, Treasury and the IRS have decided to remove § 1.1291–9(i)(1), which provides that the rules of § 1.1291–9, the deemed dividend election, do not apply to an election under section 1297(b)(1). The removal of § 1.1291–9(i)(1) is effective as of January 2, 1998. Section 1.1291–9(i)(2) is not affected by the removal of § 1.1291–9(i)(1).

8. Section 1297

The temporary regulations amend § 1.1297–3T to provide that a shareholder of a former PFIC, within the meaning of § 1.1291–9(j)(2)(iv), that was a CFC during its last taxable year as a PFIC under section 1296(a), may apply the rules of the deemed dividend election under section 1291(d)(2)(B) and § 1.1291–9 to its section 1297(b)(1) election made by the time and in the manner provided in § 1.1297–3T(b). If the time for making a section 1297(b)(1) election, provided in § 1.1297–3T(b), expired before January 2, 1998, a shareholder that applied the rules of section 1291(d)(2)(A) and § 1.1291–10 to a section 1297(b)(1) election, made with respect to a former PFIC that was a CFC in its last taxable year as a PFIC under section 1296(a), may file an amended return for its taxable year that includes the termination date, as defined in § 1.1297–3T(a), and apply the rules of the deemed dividend election to its section 1297(b)(1) election at any time before the expiration of the period of limitations for the assessment of taxes for that taxable year. Section 1.1297–3T(c) is effective as of January 2, 1998.

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. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. An initial regulatory flexibility analysis has been prepared for the proposed regulations for which these temporary regulations serve as a text and which is set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

Drafting Information

The principal authors of these regulations are Gayle Novig and Judith Cavell Cohen, of the Office of the Associate Chief Counsel (International). Other personnel from the IRS and Treasury Department also participated in the development of these regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following entries, in numerical order to read as follows:

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

Section 1.1291–1T also issued under 26 U.S.C. 1291.* * *

Section 1.1293–1T also issued under 26 U.S.C. 1293.* * *

Section 1.1295–1T also issued under 26 U.S.C. 1295(b).

Section 1.1295–3T also issued under 26 U.S.C. 1295(b).* * *

§ 1.1291–0 [Amended]

Par. 2. Section 1.1291–0 is amended by removing and reserving the entry for § 1.1291–9(i)(1).

Par. 3. The section heading and introductory text for § 1.1294–0 are added to read as follows:

§ 1.1294–0 Table of contents.

This section contains a listing of the headings for § 1.1294–1T.

Par. 4. The section heading and introductory text for § 1.1297–0 are added to read as follows:

§ 1.1297–0 Table of contents.

This section contains a listing of the headings for § 1.1297–3T.

§ 1.1291–0T [Amended]

Par. 5. Section 1.1291–0T is amended by:

1. Transferring the listing of the section heading and entries for § 1.1294–1T to new § 1.1294–0.
2. Transferring the listing of the section heading and entries for § 1.1297–3T to new § 1.1297–0.
3. Removing the section heading and introductory text.

Par. 6. Section 1.1291–1T is added to read as follows:

§ 1.1291–1T Taxation of U.S. persons that are shareholders of PFICs that are not pedigreed QEFs (temporary).

(a) through (d) [Reserved].

(e) *Exempt organization as shareholder*—(1) *In general.* If the shareholder of a PFIC is an organization exempt from tax under this chapter, section 1291 and these regulations apply to such shareholder only if a dividend from the PFIC would be taxable to the organization under subchapter F.

(2) *Effective date.* Paragraph (e)(1) of this section is applicable on and after April 1, 1992.

§ 1.1291–9 [Amended]

Par. 7. Section 1.1291–9 is amended by removing and reserving paragraph (i)(1).

Par. 8. Section 1.1293–0 is added to read as follows.

§ 1.1293–0 Table of contents.

This section contains a listing of the headings for § 1.1293–1T.

§ 1.1293–1T Current inclusion of income of qualified electing funds (temporary).

(a) In general. [Reserved].
(1) Other rules. [Reserved].
(2) Net capital gain defined.
(i) In general.
(ii) Effective date.
(b) Other rules [Reserved].
(c) Application of rules of inclusion with respect to stock held by a pass through entity.

(1) In general.
(2) QEF stock transferred to a pass through entity.
(i) Pass through entity makes a section 1295 election.
(ii) Pass through entity does not make a section 1295 election.
(3) Effective date.

Par. 9. Section 1.1293–1T is added to read as follows:

§ 1.1293–1T Current taxation of income from qualified electing funds (temporary).

(a) *In general.* [Reserved].
(1) *Other rules.* [Reserved].
(2) *Net capital gain defined*—(i) *In general.* This paragraph (a)(2) defines the term net capital gain for purposes of sections 1293 and 1295 and the regulations under those sections. The QEF, as defined in § 1.1291–9(j)(2)(i), in determining its net capital gain for a taxable year, may either—
(A) Calculate and report the amount of each category of long-term capital gain provided in section 1(h) that was recognized by the PFIC in the taxable year;
(B) Calculate and report the amount of net capital gain recognized by the PFIC in the taxable year, stating that that amount is subject to the highest capital gain rate of tax applicable to the shareholder; or
(C) Calculate its earnings and profits for the taxable year and report the entire amount as ordinary earnings.
(ii) *Effective date.* Paragraph (a)(2)(i) of this section is applicable to sales by QEFs during their taxable years ending on or after May 7, 1997.
(b) *Other rules.* [Reserved].
(c) *Application of rules of inclusion with respect to stock held by a pass through entity*—(1) *In general.* A domestic pass through entity takes into account its pro rata shares of the ordinary earnings and net capital gain attributable to the QEF shares held by the pass through entity. A U.S. person that indirectly owns QEF shares through the domestic pass through entity accounts for its pro rata shares of ordinary earnings and net capital gain attributable to the QEF shares according to the general rules applicable to inclusions of income from the domestic pass through entity. For the definition of pass through entity, see § 1.1295–1T(j).
(2) *QEF stock transferred to a pass through entity*—(i) *Pass through entity makes a section 1295 election.* If a shareholder transfers stock subject to a section 1295 election to a domestic pass through entity of which it is an interest holder and the pass through entity makes a section 1295 election with respect to that stock, as provided in § 1.1295–1T(D)(2), the shareholder takes into account its pro rata shares of the ordinary earnings and net capital gain attributable to the QEF shares under the rules applicable to inclusions of income from the pass through entity.
(ii) *Pass through entity does not make a section 1295 election.* If the pass through entity does not make a section 1295 election with respect to the PFIC, the shares of which were transferred to the pass through entity subject to the 1295 election of the shareholder, the shareholder continues to be subject, in its capacity as an indirect shareholder, to the income inclusion rules of section 1293 and reporting rules required of shareholders of QEFs. Proper adjustments to reflect an inclusion in income under section 1293 by the indirect shareholder must be made, under the principles of § 1.1291–9(f), to the basis of the indirect shareholder's interest in the pass through entity.
(3) *Effective date.* Paragraph (c) of this section is applicable to taxable years of shareholders beginning after December 31, 1997.

Par. 10. Section 1.1295–0 is added to read as follows:

§ 1.1295–0 Table of contents.

This section contains a listing of the headings for §§ 1.1295–1T and 1.1295–3T.

§ 1.1295–1T Qualified electing funds (temporary).

(a) In general. [Reserved.]
(b) Application of section 1295 election. [Reserved.]
(1) Election personal to shareholder. [Reserved.]
(2) Election applicable to specific corporation only.
(i) In general. [Reserved.]
(ii) Stock of QEF received in a nonrecognition transfer. [Reserved.]
(iii) Exception for options.
(3) Application of general rules to stock held by a pass through entity.
(i) Stock subject to a section 1295 election transferred to a pass through entity.
(ii) Limitation on application of pass through entity's section 1295 election.
(iii) Effect of partnership termination on section 1295 election.
(iv) Characterization of stock held through a pass through entity.
(4) Application of general rules to a taxpayer filing a joint return under section 6013.
(c) Effect of section 1295 election.
(1) In general.
(2) Years to which section 1295 election applies.
(i) In general.
(ii) Effect of PFIC status on election.
(iii) Effect on election of complete termination of a shareholder's interest in the PFIC.
(iv) Effect on section 1295 election of transfer of stock to a domestic pass through entity.
(v) Examples.
(d) Who may make a section 1295 election.
(1) General rule.
(2) Application of general rule to pass through entities.
(i) Partnerships.
(A) Domestic partnership.
(B) Foreign partnership.
(ii) S corporation.
(iii) Trust or estate.
(A) Domestic trust or estate.
(*1*) Nongrantor trust or estate.
(*2*) Grantor trust.
(B) Foreign trust or estate.
(*1*) Nongrantor trust or estate.
(*2*) Grantor trust.
(iv) Indirect ownership of the pass through entity or the PFIC.
(3) Member of consolidated return group as shareholder.
(4) Option holder.
(5) Exempt organization.
(e) Time for making a section 1295 election.
(f) Manner of making a section 1295 election and the annual election requirements of the shareholder.
(1) Manner of making the election.
(2) Annual election requirements.
(i) In general.
(ii) Retention of documents.
(g) Annual election requirements of the PFIC or intermediary.
(1) PFIC Annual Information Statement.
(2) Alternative documentation.
(3) Annual Intermediary Statement.
(4) Combined statements.
(i) PFIC Annual Information Statement.
(ii) Annual Intermediary Statement.
(h) Transition rules.
(i) Invalidation, termination or revocation of section 1295 election.
(1) Invalidation or termination of election at the discretion of the Commissioner.
(i) In general.
(ii) Deferral of section 1293 inclusion.
(iii) When effective.
(2) Shareholder revocation.
(i) In general.
(ii) Time for and manner of requesting consent to revoke.
(A) Time.
(B) Manner of making request.
(iii) When effective.
(3) Effect of invalidation, termination, or revocation.
(4) Election after invalidation, termination, or revocation.
(j) Definitions.
(k) Effective date.

§ 1.1295–3T Retroactive elections (temporary).

(a) In general.
(b) General rule.
(c) Protective Statement.
(1) In general.
(2) Reasonable belief statement.
(3) Who executes and files the Protective Statement.
(4) Waiver of the periods of limitations.
(i) Time for and manner of extending periods of limitations.
(A) In general.
(B) Application of general rule to domestic partnerships.

Par. 11. Section 1.1295–1T is added to read as follows:

§ 1.1295–1T Qualified electing funds (temporary).

(a) *In general.* [Reserved].

(b) *Application of section 1295 election.* [Reserved]

(1) *Election personal to shareholder.* [Reserved].

(2) *Election applicable to specific corporation only—*

(i) *In general.* [Reserved].

(ii) *Stock of QEF received in a nonrecognition transfer.* [Reserved].

(iii) *Exception for options.* A shareholder's section 1295 election does not apply to any option to buy stock of the PFIC.

(3) *Application of general rules to stock held by a pass through entity—*(i) *Stock subject to a section 1295 election transferred to a pass through entity.* A shareholder's section 1295 election will not apply to a domestic pass through entity to which the shareholder transfers stock subject to section 1295 election, or to any other U.S. person that is an interest holder or beneficiary of the domestic pass through entity. However, as provided in paragraph (c)(2)(iv) of this section (relating to a transfer to a domestic pass through entity of stock subject to a section 1295 election), a shareholder that transfers stock subject to a section 1295 election to a pass through entity will continue to be subject to the section 1295 election with respect to the stock indirectly owned through the pass through entity and any other stock of that PFIC owned by the shareholder.

(ii) *Limitation on application of pass through entity's section 1295 election.* Except as provided in paragraph (c)(2)(iv) of this section, a section 1295 election made by a domestic pass through entity does not apply to other stock of the PFIC held directly or indirectly by the interest holder or beneficiary.

(iii) *Effect of partnership termination on section 1295 election.* Termination of a section 1295 election made by a domestic partnership by reason of the termination of the partnership under section 708(b) will not terminate the section 1295 election with respect to partners of the terminated partnership that are partners of the new partnership. Except as otherwise provided, the stock of the PFIC of which the new partners are indirect shareholders will be treated as stock of a QEF only if the new domestic partnership makes a section 1295 election with respect to that stock.

(iv) *Characterization of stock held through a pass through entity.* Stock of a PFIC held through a pass through entity will be treated as stock of a pedigreed QEF with respect to an interest holder or beneficiary only if—

(A) In the case of PFIC stock acquired (other than in a transaction in which gain is not recognized pursuant to regulations under section 1291(f) with respect to that stock), and held by a domestic pass through entity, the pass through entity makes the section 1295 election and the PFIC has been a QEF with respect to the pass through entity for all taxable years that are included wholly or partly in the pass through entity's holding period of the PFIC stock and during which the foreign corporation was a PFIC within the meaning of § 1.1291–9(j)(1); or

(B) In the case of PFIC stock transferred by an interest holder or beneficiary to a pass through entity in a transaction in which gain is not recognized pursuant to regulations under section 1291(f) with respect to that stock and held by the pass through entity, the PFIC stock transferred to the pass through entity was treated as stock of a pedigreed QEF with respect to the interest holder or beneficiary at the time of the transfer and the pass through entity makes a section 1295 election.

(4) *Application of general rules to a taxpayer filing a joint return under section 6013.* A section 1295 election made by a taxpayer in a joint return, within the meaning of section 6013, will be treated as also made by the spouse that joins in the filing of that return.

(c) *Effect of section 1295 election—*(1) *In general.* Except as otherwise provided in this paragraph (c), the effect of a shareholder's section 1295 election is to treat the foreign corporation as a QEF with respect to the shareholder for each taxable year of the foreign corporation ending with or within a taxable year of the shareholder for which the election is effective. A section 1295 election is effective for the shareholder's election year and all subsequent taxable years of the shareholder unless invalidated, terminated or revoked as provided in paragraph (i) of this section. The terms shareholder and shareholder's election year are defined in paragraph (j) of this section.

(2) *Years to which section 1295 election applies—*(i) *In general.* Except as otherwise provided in this paragraph (c), a foreign corporation with respect to which a section 1295 election is made will be treated as a QEF for its taxable year ending with or within the shareholder's election year and all subsequent taxable years of the foreign corporation that are included wholly or partly in the shareholder's holding period (or periods) of stock of the foreign corporation.

(ii) *Effect of PFIC status on election.* A foreign corporation will not be treated

as a QEF for any taxable year of the foreign corporation that the foreign corporation is not a PFIC under section 1296(a) and is not treated as a PFIC under section 1297(b)(1). However, cessation of a foreign corporation's status as a PFIC will not terminate a section 1295 election.

(iii) *Effect on election of complete termination of a shareholder's interest in the PFIC.* Complete termination of a shareholder's direct and indirect interest in stock of a foreign corporation will not terminate a shareholder's section 1295 election with respect to the foreign corporation.

(iv) *Effect on section 1295 election of transfer of stock to a domestic pass through entity.* The transfer of a shareholder's direct or indirect interest in stock of a foreign corporation to a domestic pass through entity (as defined in paragraph (j) of this section) will not terminate the shareholder's section 1295 election with respect to the foreign corporation, whether or not the pass through entity makes a section 1295 election. For the rules concerning the application of section 1293 to stock transferred to a domestic pass through entity, see § 1.1293–1T(c).

(v) *Examples.* The following examples illustrate the rules of this paragraph (c)(2).

Example 1. In 1998, C, a U.S. person, purchased stock of FC, a foreign corporation that is a PFIC. Both FC and C are calendar year taxpayers. C made a timely section 1295 election to treat FC as a QEF in C's 1998 return, and FC was therefore a pedigreed QEF. C included its shares of FC's 1998 ordinary earnings and net capital gain in C's 1998 Income and did not make a section 1294 election to defer the time for payment of tax on that income. In 1999, 2000, and 2001, FC did not satisfy either the income or asset test of section 1296(a), and therefore was neither a PFIC nor a QEF. C therefore did not have to include its pro rata shares of the ordinary earnings and net capital gain of FC pursuant to section 1293, or satisfy the section 1295 annual reporting requirements for any of those years. FC qualified as a PFIC again in 2002. Because C had made a section 1295 election in 1998, and the election had not been invalidated, terminated, or revoked, within the meaning of paragraph (i) of this section, C's section 1295 election remains in effect for 2002. C therefore is subject in 2002 to the income inclusion and reporting rules required of shareholders of QEFs.

Example 2. The facts are the same as in Example (1) except that FC did not lose PFIC status in any year and C sold all the FC stock in 1999 and repurchased stock of FC in 2002. Because C had made a section 1295 election in 1998 with respect to stock of FC, and the election had not been invalidated, terminated, or revoked, within the meaning of paragraph (i) of this section, C's section 1295 election remained in effect and therefore applies to the stock of FC purchased by C in 2002. C therefore is subject in 2002 to the income inclusion and reporting rules required of shareholders of QEFs.

Example 3. The facts are the same as in Example (2) except that C is a partner in domestic partnership P and C transferred its FC stock to P in 1999. Because C had made a section 1295 election in 1998 with respect to stock of FC, and the election had not been invalidated, terminated, or revoked, within the meaning of paragraph (i) of this section, C's section 1295 election remains in effect with respect to its indirect interest in the stock of FC. If P does not make the section 1295 election with respect to the FC stock, C will continue to be subject, in C's capacity as an indirect shareholder of FC, to the income inclusion and reporting rules required of shareholders of QEFs in 1999 and subsequent years. If P makes the section 1295 election, C will take into account its pro rata shares of the ordinary earnings and net capital gain of the FC under the rules applicable to inclusions of income from P.

(d) *Who may make a section 1295 election*—(1) *General rule.* Except as otherwise provided in this paragraph (d), any U.S. person that is a shareholder (as defined in paragraph (j) of this section) of a PFIC, including a shareholder that holds stock of a PFIC in bearer form, may make a section 1295 election with respect to that PFIC. The shareholder need not own directly or indirectly any stock of the PFIC at the time the shareholder makes the section 1295 election provided the shareholder is a shareholder of the PFIC during the taxable year of the PFIC that ends with or within the taxable year of the shareholder for which the section 1295 election is made. Except in the case of a shareholder that is an exempt organization that may not make a section 1295 election, as provided in paragraph (d)(5) of this section, in a chain of ownership only the first U.S. person that is a shareholder of the PFIC may make the section 1295 election.

(2) *Application of general rule to pass through entities*—(i) *Partnerships*—(A) *Domestic partnership.* A domestic partnership that holds an interest in stock of a PFIC makes the section 1295 election with request to that PFIC. The partnership election applies only to the stock of the PFIC held directly or indirectly by the partnership and not to any other stock held directly or indirectly by any partner. As provided in § 1.1293–1T(c)(1), shareholders owning stock of a QEF by reason of an interest in the partnership take into account the section 1293 inclusions with respect to the QEF shares owned by the partnership under the rules applicable to inclusions of income from the partnership.

(B) *Foreign partnership.* A U.S. person that holds an interest in a foreign partnership that, in turn, holds an interest in stock of a PFIC makes the section 1295 election with respect to that PFIC. A partner's election applies to the stock of the PFIC owned directly or indirectly by the foreign partnership and to any other stock of the PFIC owned by that partner. A section 1295 election by a partner applies only to that partner.

(ii) *S corporation.* An S corporation that holds an interest in stock of a PFIC makes the section 1295 election with respect to that PFIC. The S corporation election applies only to the stock of the PFIC held directly or indirectly by the S corporation and not to any other stock held directly or indirectly by any S corporation shareholder. As provided in § 1.1293–1T(c)(1), shareholders owning stock of a QEF by reason of an interest in the S corporation take into account the section 1293 inclusions with respect to the QEF shares under the rules applicable to inclusions of income from the S corporation.

(iii) *Trust or estate*—(A) *Domestic trust or estate*—(*1*) *Nongrantor trust or estate.* A domestic nongrantor trust or a domestic estate that holds an interest in stock of a PFIC makes the section 1295 election with respect to that PFIC. The trust or estate's election applies only to the stock of the PFIC held directly or indirectly by the trust or estate and not to any other stock held directly or indirectly by any beneficiary. As provided in § 1.1293–1T(c)(1), shareholders owning stock of a QEF by reason of an interest in a domestic trust or estate take into account the section 1293 inclusions with respect to the QEF shares under the rules applicable to inclusions of income from the trust or estate.

(*2*) *Grantor trust.* A U.S. person that is treated under sections 671 through 678 as the owner of the portion of a domestic trust that owns an interest in stock of a PFIC makes the section 1295 election with respect to that PFIC. If that person ceases to be treated as the owner of the portion of the trust that owns an interest in the PFIC stock and is a beneficiary of the trust, that person's section 1295 election will continue to apply to the PFIC stock indirectly owned by that person under the rules of paragraph (c)(2)(iv) of this section as if the person had transferred its interest in the PFIC stock to the trust. However, the stock will be treated as stock of a PFIC that is not a QEF with respect to other beneficiaries of the trust, unless the trust makes the section 1295 election as provided in paragraph (d)(2)(iii)(A)(*1*) of this section.

(B) *Foreign trust or estate*—(*1*) *Nongrantor trust or estate.* A U.S.

person that is a beneficiary of a foreign nongrantor trust or estate that holds an interest in stock of a PFIC makes the section 1295 election with respect to that PFIC. A beneficiary's section 1295 election applies to all the PFIC stock owned directly and indirectly by the trust or estate and to the other PFIC stock owned directly or indirectly by the beneficiary. A section 1295 election by a beneficiary applies only to that beneficiary.

(*2*) *Grantor trust.* A U.S. person that is treated under sections 671 through 679 as the owner of the portion of a foreign trust that owns an interest in stock of a PFIC stock makes the section 1295 election with respect to that PFIC. If that person ceases to be treated as the owner of the portion of the trust that owns an interest in the PFIC stock and is a beneficiary of the trust, that person's section 1295 election will continue to apply to the PFIC stock indirectly owned by that person under the rules of paragraph (c)(2)(iv) of this section. However, as provided in paragraph (d)(2)(iii)(B)(*1*) of this section, any other shareholder that is a beneficiary of the trust and that wishes to treat the PFIC as a QEF must make the section 1295 election.

(iv) *Indirect ownership of the pass through entity or the PFIC.* The rules of this paragraph (d)(2) apply whether or not the shareholder holds its interest in the pass through entity directly or indirectly and whether or not the pass through entity holds its interest in the PFIC directly or indirectly.

(3) *Member of consolidated return group as shareholder.* Pursuant to § 1.1502–77(a), the common parent of an affiliated group of corporations that join in filing a consolidated income tax return makes a section 1295 election for all members of the affiliated group. An election by a common parent will be effective for all members of the affiliated group with respect to interests in PFIC stock held at the time the election is made or at any time thereafter. A separate election must be made by the common parent for each PFIC of which a member of the affiliated group is a shareholder.

(4) *Option holder.* A holder of an option to acquire stock of a PFIC may not make a section 1295 election that will apply to the option or to the stock subject to the option.

(5) *Exempt organization.* A tax-exempt organization that is not taxable under section 1291, pursuant to § 1.1291–1T(e), with respect to a PFIC may not make a section 1295 election with respect to that PFIC. In addition, such an exempt organization will not be subject to any section 1295 election made by a domestic pass through entity.

(e) *Time for making a section 1295 election.* Except as provided in § 1.1295–3T, a shareholder making the section 1295 election must make the election on or before the due date, as extended under section 6081 (election due date), for filing the shareholder's income tax return for the first taxable year to which the election will apply. The section 1295 election must be made in the original return for that year, or in an amended return, provided the amended return is filed on or before the election due date.

(f) *Manner of making a section 1295 election and the annual election requirements of the shareholder*—(1) *Manner of making the election.* A shareholder must make a section 1295 election by—

(i) Completing Form 8621 in the manner required by that form and this section for making the section 1295 election;

(ii) Attaching Form 8621 to its federal income tax return filed by the election due date for the shareholder's election year;

(iii) Receiving and reflecting in Form 8621 the information provided in the PFIC Annual Information Statement described in paragraph (g)(1) of this section, the Annual Intermediary Statement described in paragraph (g)(3) of this section, or the applicable combined statement described in paragraph (g)(4) of this section, for the taxable year of the PFIC ending with or within the taxable year for which Form 8621 is being filed. If the PFIC Annual Information Statement contains a statement described in paragraph (g)(1)(ii)(C) of this section, the shareholder must attach a statement to Form 8621 that indicates that the shareholder rather than the QEF calculated the QEF's ordinary earnings and net capital gain; and

(iv) Filing a copy of Form 8621 with the Philadelphia Service Center, P.O. Box 21086, Philadelphia, PA 19114 by the election due date.

(2) *Annual election requirements*—(i) *In general.* A shareholder that makes a section 1295 election with respect to a PFIC held directly or indirectly, for each taxable year to which the section 1295 election applies, must—

(A) Complete Form 8621 in the manner required by that form and this section;

(B) Attach Form 8621 to its federal income tax return filed by the due date of the return, as extended;

(C) Receive and reflect in Form 8621 the PFIC Annual Information Statement described in paragraph (g)(1) of this section, the Annual Intermediary Statement described in paragraph (g)(3) of this section, or the applicable combined statement described in paragraph (g)(4) of this section, for the taxable year of the PFIC ending with or within the taxable year for which Form 8621 is being filed. If the PFIC Annual Information Statement contains a statement described in paragraph (g)(1)(ii)(C) of this section, the shareholder must attach a statement to its Form 8621 that the shareholder rather than the PFIC provided the calculations of the PFIC's ordinary earnings and net capital gain; and

(D) File a copy of Form 8621 with the Philadelphia Service Center, P.O. Box 21086, Philadelphia, PA 19114 by the election due date.

(ii) *Retention of documents.* For all taxable years subject to the section 1295 election, the shareholder must retain copies of all Forms 8621, with their attachments, and PFIC Annual Information Statements or Annual Intermediary Statements. Failure to produce those documents at the request of the Commissioner in connection with an examination may result in invalidation or termination of the shareholder's section 1295 election.

(g) *Annual election requirements of the PFIC or intermediary*—(1) *PFIC Annual Information Statement.* For each year of the PFIC ending in a taxable year of a shareholder to which the shareholder's section 1295 election applies, the PFIC must provide the shareholder with a PFIC Annual Information Statement. The PFIC Annual Information Statement is a statement of the PFIC, signed by the PFIC or an authorized representative of the PFIC, that contains the following information and representation—

(i) The first and last days of the taxable year of the PFIC to which the PFIC Annual Information Statement applies;

(ii) Either—

(A) The shareholder's pro rata shares of the ordinary earnings and net capital gain (as defined in § 1.1295–1T(a)(2)) of the PFIC for the taxable year indicated in paragraph (g)(1)(i) of this section; or

(B) Sufficient information to enable the shareholder to calculate its pro rata shares of the PFIC's ordinary earnings and net capital gain, for that taxable year; or

(C) A statement that the foreign corporation has permitted the shareholder to examine the books of account, records, and other documents of the foreign corporation for the shareholder to calculate the amounts of the PFIC's ordinary earnings and the net capital gain according to federal income

tax accounting principles and to calculate the shareholder's pro rata shares of the PFIC's ordinary earnings and net capital gain;

(iii) The amount of cash and the fair market value of other property distributed or deemed distributed to the shareholder during the taxable year of the PFIC to which the PFIC Annual Information Statement pertains; and

(iv) Either—

(A) A statement that the PFIC will permit the shareholder to inspect and copy the PFIC's permanent books of account, records, and such other documents as may be maintained by the PFIC to establish that the PFIC's ordinary earnings and net capital gain are computed in accordance with U.S. income tax principles, and to verify these amounts and the shareholder's pro rata shares thereof; or

(B) In lieu of the statement required in paragraph (g)(1)(iv)(A) of this section, a description of the alternative documentation requirements approved by the Commissioner, with a copy of the private letter ruling and the closing agreement entered into by the Commissioner and the PFIC pursuant to paragraph (g)(2) of this section.

(2) *Alternative documentation.* In rare and unusual circumstances, the Commissioner will consider alternative documentation requirements necessary to verify the ordinary earnings and net capital gain of a PFIC other than the documentation requirements described in paragraph (g)(1)(iv)(A) of this section. Alternative documentation requirements will be allowed only pursuant to a private letter ruling and a closing agreement entered into by the Commissioner and the PFIC describing an alternative method of verifying the PFIC's ordinary earnings and net capital gain. If the PFIC has not obtained a private letter ruling from the Commissioner approving an alternative method of verifying the PFIC's ordinary earnings and net capital gain by the time a shareholder is required to make a section 1295 election, the shareholder may not use an alternative method for that taxable year.

(3) *Annual Intermediary Statement.* In the case of a U.S. person that is a shareholder of a PFIC through an intermediary, as defined in paragraph (j) of this section, an Annual Intermediary Statement issued by an intermediary containing the information described in paragraph (g)(1) of this section and reporting the indirect owner's pro rata shares of the ordinary earnings and net capital gain of the QEF as described in paragraph (g)(1)(i)(A) of this section, may be provided to the indirect owner in lieu of the PFIC Annual Information Statement if the following conditions are satisfied—

(i) The intermediary receives a copy of the PFIC Annual Information Statement or the intermediary receives an annual intermediary statement from another intermediary which contains a statement that the other intermediary has received a copy of the PFIC Annual Information Statement and represents that the conditions of paragraphs (g)(3)(ii) and (g)(3)(iii) of this section are met;

(ii) The representations and information contained in the Annual Intermediary Statement reflect the representations and information contained in the PFIC Annual Information Statement; and

(iii) The PFIC Annual Information Statement issued to the intermediary contains either the representation set forth in paragraph (g)(1)(iv)(A) of this section, or, if alternative documentation requirements were approved by the Commissioner pursuant to paragraph (g)(2) of this section, a copy of the private letter ruling and closing agreement between the Commissioner and the PFIC, agreeing to an alternative method of verifying PFIC ordinary earnings and net capital gain as described in paragraph (g)(2) of this section;

(4) *Combined statements*—(i) *PFIC Annual Information Statement.* A PFIC that owns directly or indirectly any stock of one or more PFICs with respect to which a shareholder may make the section 1295 election may prepare a PFIC Annual Information Statement that combines with its own information and representations the information and representations of all the PFICs. The PFIC may use any format for a combined PFIC Annual Information Statement provided the required information and representations are separately stated and identified with the respective corporations.

(ii) *Annual Intermediary Statement.* An intermediary described in paragraph (g)(3) of this section that owns directly or indirectly stock of one or more PFICs with respect to which an indirect shareholder may make the section 1295 election may prepare an Annual Intermediary Statement that combines with its own information and representations the information and representations with respect to all the PFICs. The intermediary may use any format for a combined Annual Intermediary Statement provided the required information and representations are separately stated and identified with the intermediary and the respective corporations.

(h) *Transition rules.* The rules of Notice 88–125, 1988–2 C.B. 535 (see § 601.601(d)(2)(ii)(*b*) of this chapter), apply for making elections and maintaining elections for taxable years beginning after December 31, 1986, and before January 1, 1998. Elections made under Notice 88–125 must be maintained as provided in § 1.1295–1T for taxable years beginning after December 31, 1997. A section 1295 election made prior to February 2, 1998 that was intended to be effective for the taxable year of the PFIC that began during the shareholder's election year will be effective for that taxable year of the foreign corporation provided that it is clear from all the facts and circumstances that the shareholder intended the election to be effective for that taxable year of the foreign corporation.

(i) *Invalidation, termination, or revocation of section 1295 election*—(1) *Invalidation or termination of election at the discretion of the Commissioner*—(i) *In general.* The Commissioner, in the Commissioner's discretion, may invalidate or terminate a section 1295 election applicable to a shareholder if the shareholder, the PFIC, or any intermediary fails to satisfy the requirements for making a section 1295 election or the annual election requirements of this section to which the shareholder, PFIC, or intermediary is subject, including the requirement to provide, on request, copies of the books and records of the PFIC or other documentation substantiating the ordinary earnings and net capital gain of the PFIC.

(ii) *Deferral of section 1293 inclusion.* The Commissioner may invalidate any pass through entity section 1295 election with respect to an interest holder or beneficiary if the section 1293 inclusion with respect to that interest holder or beneficiary is not included in the gross income of either the pass through entity, an intermediate pass through entity, or the interest holder or beneficiary within two years of the end of the PFIC's taxable year due to nonconforming taxable years of the interest holder and the pass through entity or any intermediate pass through entity.

(iii) *When effective.* Termination of a shareholder's section 1295 election will be effective for the taxable year of the PFIC determined by the Commissioner in the Commissioner's discretion. An invalidation of a shareholder's section 1295 election will be effective for the first taxable year to which the section 1295 election applied, and the shareholder whose election is

invalidated will be treated as if the section 1295 election never was made.

(2) *Shareholder revocation*—(i) *In general.* In the Commissioner's discretion, upon a finding of a substantial change in circumstances, the Commissioner may consent to a shareholder's request to revoke a section 1295 election. Request for revocation must be made by the shareholder that made the election and at the time and in the manner provided in paragraph (i)(2)(ii) of this section.

(ii) *Time for and manner of requesting consent to revoke*—(A) *Time.* The shareholder must request consent to revoke the section 1295 election no later than 12 calendar months after the discovery of the substantial change of circumstances that forms the basis for the shareholder's request to revoke the section 1295 election.

(B) *Manner of making request.* A shareholder requests consent to revoke a section 1295 election by filing a ruling request with the Office of the Associate Chief Counsel (International). The ruling request must satisfy the requirements, including payment of the user fee, for filing ruling requests with that office.

(iii) *When effective.* Unless otherwise determined by the Commissioner, revocation of a section 1295 election will be effective for the first taxable year of the PFIC beginning after the date the Commissioner consents to the revocation.

(3) *Effect of invalidation, termination, or revocation.* An invalidation, termination, or revocation of a section 1295 election—

(i) Terminates all section 1294 elections, as provided in § 1.1294–1T(e), and the undistributed PFIC earnings tax liability and interest thereon are due by the due date, without regard to extensions, for the return for the last taxable year of the shareholder to which the section 1295 election applies;

(ii) In the Commissioner's discretion, results in a deemed sale of the QEF stock on the last day of the PFIC's last taxable year as a QEF, in which gain, but not loss, will be recognized and with respect to which appropriate basis and holding period adjustments will be made; and

(iii) Subjects the shareholder to any other terms and conditions that the Commissioner determines are necessary to ensure the shareholder's compliance with sections 1291 through 1297 or any other provisions of the Code.

(4) *Election after invalidation, termination or revocation.* Without the Commissioner's consent a shareholder whose section 1295 election was invalidated, terminated, or revoked under this paragraph (i) may not make the section 1295 election with respect to the PFIC before the sixth taxable year ending after the taxable year in which the invalidation, termination or revocation became effective.

(j) *Definitions.* For purposes of this section—

Intermediary is a nominee or shareholder of record that holds stock on behalf of the shareholder or on behalf of another person in a chain of ownership between the shareholder and the PFIC, and any direct or indirect beneficial owner of PFIC stock (including a beneficial owner that is a pass through entity) in the chain of ownership between the shareholder and the PFIC.

Pass through entity is a partnership, S corporation, trust, or estate.

Shareholder has the same meaning as the term shareholder in § 1.1291–9(j)(3), except that for purposes of this section, a partnership and an S corporation also are treated as shareholders. Furthermore, unless otherwise provided, an interest holder of a pass through entity, which is treated as a shareholder of a PFIC, also will be treated as a shareholder of the PFIC.

Shareholder's election year is the taxable year of the shareholder for which it made the section 1295 election.

(k) *Effective date.* Section 1.1295–1T(b)(2)(iii), (b)(3), (b)(4), and (c) through (j) is applicable to taxable years of shareholders beginning after December 31, 1997.

Par. 12. Section 1.1295–3T is added to read as follows:

§ 1.1295–3T Retroactive elections (temporary).

(a) *In general.* This section prescribes the exclusive rules under which a shareholder, as defined in § 1.1295–1T(j), may make a section 1295 election for a taxable year after the election due date, as defined in § 1.1295–1T(e) (retroactive election). Therefore, a shareholder may not seek such relief under any other provision of the law, including § 301.9100 of this chapter. Paragraph (b) of this section describes the general rules for a shareholder to preserve the ability to make a retroactive election. These rules require that the shareholder possess reasonable belief as of the election due date that the foreign corporation was not a PFIC for its taxable year that ended in the shareholder's taxable year to which the election due date pertains, and that the shareholder file a Protective Statement to preserve its ability to make a retroactive election. Paragraph (c) of this section establishes the terms, conditions and other requirements with respect to a Protective Statement required to be filed under the general rules. Paragraph (d) of this section sets forth factors that establishes a shareholder's reasonable belief that a foreign corporation was not a PFIC. Paragraph (e) of this section prescribes special rules for certain shareholders that are deemed to satisfy the reasonable belief requirement and therefore are not required to file a Protective Statement. Paragraph (f) of this section describes the limited circumstances under which the Commissioner may permit a shareholder that lacked the requisite reasonable belief or failed to satisfy the requirements of paragraph (b) or (e) of this section to make a retroactive election. Paragraph (g) of this section provides the time for and manner of making a retroactive election. Paragraph (h) of this section provides the effective date of this section.

(b) *General rule.* Except as provided in paragraphs (e) and (f) of this section, a shareholder may make a retroactive election for a taxable year of the shareholder (retroactive election year) only if the shareholder—

(1) Reasonably believed, within the meaning of paragraph (d) of this section, as of the election due date that the foreign corporation was not a PFIC for its taxable year that ended during the retroactive election year;

(2) Filed a Protective Statement with respect to the foreign corporation, applicable to the retroactive election year, in which the shareholder described the basis for its reasonable belief and extended, in the manner provided in paragraph (c)(4) of this section, the periods of limitations on the assessment of taxes determined under sections 1291 and 1297 with respect to the foreign corporation (PFIC related taxes) for all taxable years of the shareholder to which the Protective Statement applies; and

(3) Complied with the other terms and conditions of the Protective Statement.

(c) *Protective Statement*—(1) *In general.* A Protective Statement is a statement executed under penalties of perjury by the shareholder, or a person authorized to sign a federal income tax return on behalf of the shareholder, that preserves the shareholder's ability to make a retroactive election. To file a Protective Statement that applies to a taxable year of the shareholder, the shareholder must reasonably believe as of the election due date that the foreign corporation was not a PFIC for the foreign corporation's taxable year that ended during the retroactive election year. The Protective Statement must contain—

(i) The shareholder's reasonable belief statement, as described in paragraph (c)(2) of this section;

(ii) The shareholder's agreement extending the periods of limitations on the assessment of PFIC related taxes for all taxable years to which the Protective Statement applies, as provided in paragraph (c)(4) of this section; and

(iii) The following information and representations—

(A) The shareholder's name, address, taxpayer identification number, and the shareholder's first taxable year to which the Protective Statement applies;

(B) The foreign corporation's name, address, and taxpayer identification number, if any; and

(C) The highest percentage of shares of each class of stock of the foreign corporation held directly or indirectly by the shareholder during the shareholder's first taxable year to which the Protective Statement applies.

(2) *Reasonable belief statement.* The Protective Statement must contain a reasonable belief statement, as described in paragraph (c)(1) of this section. The reasonable belief statement is a description of the shareholder's basis for its reasonable belief that the foreign corporation was not a PFIC for its taxable year that ended with or within the shareholder's first taxable year to which the Protective Statement applies. If the Protective Statement applies to a taxable year or years described in paragraph (c)(5)(ii) of this section, the reasonable belief statement must describe the shareholder's basis for its reasonable belief that the foreign corporation was not a PFIC for the foreign corporation's taxable year or years that ended in such taxable year or years of the shareholder. The reasonable belief statement must discuss the application of the income and asset tests to the foreign corporation and the factors, including those stated in paragraph (d) of this section, that affect the results of those tests.

(3) *Who executes and files the Protective Statement.* The person that executes and files and Protective Statement is the person that makes the section 1295 election, as provided in § 1.1295–1T(d).

(4) *Waiver of the periods of limitations*—(i) *Time for and manner of extending periods of limitations.* (A) *In general.* A shareholder that files the Protective Statement with the Commissioner must extend the periods of limitations on the assessment of all PFIC related taxes for all of the shareholder's taxable years to which the Protective Statement applies, as provided in this paragraph (c)(4). The shareholder is required to execute the waiver on such form as the Commission may prescribe for purposes of this paragraph (c)(4). Until that form is published, the shareholder must execute a statement in which the shareholder agrees to extend the periods of limitations on the assessment of taxes for all the shareholder's taxable years to which the Protective Statement applies, as provided in this paragraph (c)(4), and agrees to the restrictions in paragraph (c)(4)(ii)(A) of this section. The shareholder or a person authorized to sign the shareholder's federal income tax return must sign the form or statement. A properly executed form or statement authorized by this paragraph (c)(4) will be deemed consented to and signed by a Service Center Director or the Assistant Commissioner (International) for purposes of § 301.6501(c)–1(d) of this chapter.

(B) *Application of general rule to domestic partnerships*—(*1*) *In general.* A domestic partnership that holds an interest in stock of a PFIC satisfies the waiver requirement of paragraph (c)(4) of this section pursuant to the rules of this paragraph (c)(4)(i)(B)(*1*). The partnership must file one or more waivers obtained or arranged under this paragraph (c)(4)(i)(B) as part of the Protective Statement, as provided in paragraph (c)(1) of this section. The partnership must either—

(*i*) Obtain from each partner the partner's waiver of the periods of limitations;

(*ii*) Obtain from each partner a duly executed power of attorney under § 601.501 of this chapter authorizing the partnership to extend that partner's periods of limitations, and execute a waiver on behalf of the partners; or

(*iii*) In the case of a domestic partnership governed by the unified audit and litigation procedures of sections 6221 through 6233 (TEFRA partnership), arrange for the tax matters partner (or any other person authorized to enter into an agreement to extend the periods of limitations), as provided in section 6229(b), to execute a waiver on behalf of all the partners.

(*2*) *Special rules*—(*i*) *Addition of partner to non-TEFRA partnership.* In the case of any individual who becomes a partner in a domestic partnership other than a TEFRA partnership (non-TEFRA partnership) in a taxable year subsequent to the year in which the partnership filed a Protective Statement, the partner and the partnership must comply with the rules applicable to non-TEFRA partnerships, as provided in paragraph (c)(4)(i)(B)(*1*) of this section, by the due date, as extended, for the federal income tax return of the partnership for the taxable year during which the individual became a partner. Failure to so comply will render the Protective Statement invalid with respect to the partnership and partners.

(*ii*) *Change in status from non-TEFRA partnership to TEFRA partnership.* If a partnership is a non-TEFRA partnership in one taxable year but becomes a TEFRA partnership in a subsequent taxable year, the partnership must file one or more waivers obtained or arranged under this paragraph (c)(4)(i)(B)(*2*)(*ii*), as part of the Protective Statement, as provided in paragraph (c)(1) of this section. The partnership must either—obtain from any new partner the partner's waiver described in this paragraph (c)(4); obtain from the new partner a duly executed power of attorney under § 601.501 of this chapter authorizing the partnership to extend the partner's periods of limitations, and execute a waiver on behalf of the new partner; or arrange for the tax matters partner (or any other person authorized to enter into an agreement to extend the periods of limitations) to execute a waiver on behalf of all the partners. In each case, the partnership must attach any new waiver of a partner's periods of limitations, and a copy of the Protective Statement to its federal income tax return for that taxable year.

(C) *Application of general rule to domestic nongrantor trusts and domestic estates.* A domestic nongrantor trust or a domestic estate that holds an interest in stock of a PFIC satisfies the waiver requirement of this paragraph (c)(4) at the entity level. For this purpose, such entity must comply with rules similar to those applicable to non-TEFRA partnerships, as provided in paragraph (c)(4)(i)(B)(*1*) of this section.

(D) *Application of general rule to S corporations.* An S corporation that holds an interest in stock of a PFIC satisfies the waiver requirement of this paragraph (c)(4) at the S corporation level. For this purpose, the S corporation must comply with rules similar to those applicable to non-TEFRA partnerships, as provided in paragraph (c)(4)(i)(B)(*1*) of this section. However, in the case of an S corporation that was governed by the unified audit corporate proceedings of sections 6241 through 6245 for any taxable year to which a Protective Statement applies (former TEFRA S corporation), the tax matters person (or any other person authorized to enter into such an agreement), as was provided in sections 6241 through 6245, may execute a waiver described in this paragraph (c)(4) that applies to such taxable year; for any other taxable year, the former TEFRA S corporation must comply with rules

similar to those applicable to non-TEFRA partnerships.

(E) *Effect on waiver of complete termination of a pass through entity or pass through entity's business.* The complete termination of a pass through entity described in paragraphs (c)(4)(i)(B) through (D) of this section, or a pass through entity's trade or business, will not terminate a waiver that applies to a partner, shareholder, or beneficiary.

(F) *Application of general rule to foreign partnerships, foreign trusts, domestic or foreign grantor trusts, and foreign estates.* A U.S. person that is a partner or beneficiary of a foreign partnership, foreign trust, or foreign estate that holds an interest in stock of a PFIC satisfies the waiver requirement of this paragraph (c)(4) at the partner or beneficiary level. A U.S. person that is treated under sections 671 through 679 as the owner of the portion of a domestic or foreign trust that owns an interest in PFIC stock also satisfies the waiver requirement at the owner level. A waiver by a partner or beneficiary applies only to that partner or beneficiary, and is not affected by a complete termination of the entity or the entity's trade or business.

(ii) *Terms of waiver*—(A) *Scope of waiver.* The waiver of the periods of limitations is limited to the assessment of PFIC related taxes. If the period of limitations for a taxable year affected by a retroactive election has expired with respect to the assessment of other non-PFIC related taxes, no adjustments, other than consequential changes, may be made by the Internal Revenue Service or by the shareholder to any other item of income, deduction, or credit for that year. If the period of limitations for refunds or credits for a taxable year affected by a retroactive election is open only by virtue of the assessment period extension and section 6511(c), no refund or credit is allowable on grounds other than adjustments to PFIC related taxes and consequential changes.

(B) *Period of Waiver.* The extension of the periods of limitations on the assessment of PFIC related taxes will be effective for all of the shareholder's taxable years to which the Protective Statement applies. In addition, the waiver, to the extent it applies to the period of limitations for a particular year, will terminate with respect to that year no sooner than three years from the date on which the shareholder files an amended return, as provided in paragraph (g) of this section, for that year. For the suspension of the running of the period of limitations for the collection of taxes for which a shareholder has elected under section 1294 to extend the time for payment, as provided in paragraph (g)(3)(ii) of this section, see sections 6503(i) and 6229(h).

(5) *Time for and manner of filing a Protective Statement*—(i) *In general.* Except as provided in paragraph (c)(5)(ii) of this section, a Protective Statement must be attached to the shareholder's federal income tax return for the shareholder's first taxable year to which the Protective Statement will apply. The shareholder also must file a copy of the Protective Statement with the Philadelphia Service Center, P.O. 21086, Philadelphia, PA 19114. The shareholder must file its return and the copy of the Protective Statement by the due date, as extended, for the return.

(ii) *Special rule for taxable years ended before January 2, 1998.* A shareholder may file a Protective Statement that applies to the shareholder's taxable year or years that ended before January 2, 1998, provided the period of limitations on the assessment of taxes for any such year has not expired (open year). The shareholder must file the Protective Statement applicable to such open year or years, as provided in paragraph (c)(5)(i) of this section, by the due date, as extended, for the shareholder's return for the first taxable year ending after January 2, 1998.

(6) *Applicability of the Protective Statement*—(i) *In general.* Except as otherwise provided in this paragraph (c)(6), a Protective Statement applies to the shareholder's first taxable year for which the Protective Statement was filed and to each subsequent taxable year. The Protective Statement will not apply to any taxable year of the shareholder during which the shareholder does not own any stock of the foreign corporation or to any taxable year thereafter. Accordingly, if the shareholder has not made a retroactive election with respect to the previously owned stock by the time the shareholder reacquires stock of the foreign corporation, the shareholder must file another Protective Statement to preserve its right to make a retroactive election with respect to the later acquired stock. For the rule that provides that a section 1295 election made with respect to a foreign corporation applies to stock of that corporation acquired after a lapse in ownership, see § 1.1295–1T(c)(2)(iii).

(ii) *Invalidity of the Protective Statement.* A shareholder will be treated as if it never filed a Protective Statement if—

(A) The shareholder failed to make a retroactive election by the date prescribed for making the retroactive election in paragraph (g)(1) of this section; or

(B) The waiver of the periods of limitations terminates (by reason of a court decision or other determination) with respect to any taxable year before the expiration of three years from the date of filing of an amended return for that year pursuant to paragraph (g) of this section.

(7) *Retention of Protective Statement and information demonstrating reasonable belief.* A shareholder that files a Protective Statement must retain a copy of the Protective Statement and its attachments and must, for each taxable year of the shareholder to which the Protective Statement applies, retain information sufficient to demonstrate the shareholder's reasonable belief that the foreign corporation was not a PFIC for the taxable year of the foreign corporation ending during each such taxable year of the shareholder.

(d) *Reasonable belief*—(1) *In general.* A foreign corporation is a PFIC for a taxable year if the foreign corporation satisfies either the income or asset test of section 1296(a). To determine whether a shareholder had reasonable belief that the foreign corporation is not a PFIC under section 1296(a), the shareholder must consider all relevant facts and circumstances. Reasonable belief may be based on a variety of factors, including reascnable asset valuations as well as reasonable interpretations of the applicable provisions of the Code, regulations, and administrative guidance regarding the direct and indirect ownership of the income or assets of the foreign corporation, the proper character of that income or those assets, and similar issues. Reasonable belief may be based on reasonable predictions regarding income to be earned and assets to be owned in subsequent years where qualifications of the foreign corporation as a PFIC for the current taxable year will depend on the qualification of the corporation as a PFIC in a subsequent year. Reasonable belief may be based on an analysis of generally available financial information of the foreign corporation. To determine whether a shareholder had reasonable belief that the foreign corporation was not a PFIC, the Commissioner may consider the size of the shareholder's interest in the foreign corporation.

(2) *Knowledge of law required.* Reasonable belief must be based on a good faith effort to apply the Code, regulations, and related administrative guidance. Any person's failure to know or apply these provisions will not form the basis of reasonable belief.

(e) *Special rules for qualified shareholders*—(1) *In general.* A shareholder that is a qualified shareholder, as defined in paragraph (e)(2) of this section, for a taxable year of the shareholder is not required to satisfy the reasonable belief requirement of paragraph (b)(1) of this section or file a Protective Statement to preserve its ability to make a retroactive election with respect to such taxable year. Accordingly, a qualified shareholder may make a retroactive election for any open taxable year in the shareholder's holding period. The retroactive election will be treated as made in the earliest taxable year of the shareholder during which the foreign corporation qualified as a PFIC (including a taxable year ending prior to January 2, 1998) and the shareholder will be treated as a shareholder of a pedigreed QEF, as defined in § 1.1291–9(j)(2)(ii), provided the shareholder—

(i) Has been a qualified shareholder with respect to the foreign corporation for all taxable years of the shareholder included in the shareholder's holding period during which the foreign corporation was a PFIC, or in the case of taxable years ending before January 2, 1998, the shareholder satisfies the criteria of a qualified shareholder, for all such years; or

(ii) Has been a qualified shareholder, or in the case of taxable years ending before January 2, 1998 satisfies the criteria of a qualified shareholder, for all taxable years in its holding period before it filed a Protective Statement, which Protective Statement is applicable to all subsequent years, beginning with the first taxable year in which the shareholder is not a qualified shareholder.

(2) *Qualified shareholder.* A shareholder will be treated as a qualified shareholder for a taxable year if the shareholder did not file a Protective Statement applicable to an earlier taxable year included in the shareholder's holding period of the stock of the foreign corporation currently held and—

(i) At all times during the taxable year the shareholder owned, within the meaning of section 958, directly, indirectly, or constructively, less than two percent of the vote and value of each class of stock of the foreign corporation; and

(ii) With respect to the taxable year of the foreign corporation ending within the shareholder's taxable year, the foreign corporation or U.S. counsel for the foreign corporation indicated in a public filing, disclosure statement or other notice provided to U.S. persons that are shareholders of the foreign corporation (corporate filing) that the foreign corporation—

(A) Reasonably believes that it is not or should not constitute a PFIC for the corporation's taxable year; or

(B) Is unable to conclude that it is not or should not be a PFIC (due to certain asset valuation or interpretation issues, or because PFIC status will depend on the income or assets of the foreign corporation in the corporation's subsequent taxable years) but reasonably believes that, more likely than not, it ultimately will not be a PFIC.

(3) *Exceptions.* Notwithstanding paragraph (e)(2)(ii) of this section, a shareholder will not be treated as a qualified shareholder for a taxable year of the shareholder if the shareholder knew or had reason to know that a corporate filing regarding the foreign corporation's PFIC status was inaccurate, or knew that the foreign corporation was a PFIC for the taxable year of the foreign corporation ending with or within such taxable year of the shareholder. For purposes of this paragraph, a shareholder will be treated as knowing that a foreign corporation was a PFIC if the principal activity of the foreign corporation, directly or indirectly, is owning or trading a diversified portfolio of stock, securities, or other financial contracts.

(f) *Special consent*—(1) *In general.* A shareholder that has not satisfied the requirements of paragraph (b) or (e) of this section may request the consent of the Commissioner to make a retroactive election for a taxable year of the shareholder provided the shareholder satisfies the requirements set forth in this paragraph (f). The Commissioner will grant relief under this paragraph (f) only if—

(i) The shareholder reasonably relied on a qualified tax professional, within the meaning of paragraph (f)(2) of this section;

(ii) Granting consent will not prejudice the interests of the United States government, as provided in paragraph (f)(3) of this section;

(iii) The shareholder requests consent under paragraph (f) of this section before a representative of the Internal Revenue Service raises upon audit the PFIC status of the corporation for any taxable year of the shareholder; and

(iv) The shareholder satisfies the procedural requirements set forth in paragraph (f)(4) of this section.

(2) *Reasonable reliance on a qualified tax professional*—(i) *In general.* Except as provided in paragraph (f)(2)(ii) of this section, a shareholder is deemed to have reasonably relied on a qualified tax professional only if the shareholder reasonably relied on a qualified tax professional (including a tax professional employed by the shareholder) who failed to identify the foreign corporation as a PFIC or failed to advise the shareholder of the consequences of making, or failing to make, the section 1295 election. A shareholder will not be considered to have reasonably relied on a qualified tax professional if the shareholder knew, or reasonably should have known, that the foreign corporation was a PFIC and the availability of a section 1295 election, or knew or reasonably should have known that the qualified tax professional—

(A) Was not competent to render tax advice with respect to the ownership of shares of a foreign corporation; or

(B) Did not have access to all relevant facts and circumstances.

(ii) *Shareholder deemed to have not reasonably relied on a qualified tax professional.* For purposes of this paragraph (f)(2), a shareholder is deemed to have not reasonably relied on a qualified tax professional if the shareholder was informed by the qualified tax professional that the foreign corporation was a PFIC and of the availability of the section 1295 election and related tax consequences, but either chose not to make the section 1295 election or was unable to make a valid section 1295 election.

(3) *Prejudice to the interests of the United States government*—(1) *General rule.* Except as otherwise provided in paragraph (f)(3)(ii) of this section, the Commissioner will not grant consent under paragraph (f) of this section if doing so would prejudice the interests of the United States government. The interests of the United States government are prejudiced if granting relief would result in the shareholder having a lower tax liability, taking into account applicable interest charges, in the aggregate for all years affected by the retroactive election (other than by a de minimis amount) than the shareholder would have had if the shareholder had made the section 1295 election by the election due date. The time value of money is taken into account for purposes of this computation.

(ii) *Elimination of prejudice to the interests of the United States government.* Notwithstanding the general rule of paragraph (f)(3)(i) of this section, if granting relief would prejudice the interests of the United States government, the Commissioner may, in the Commissioner's sole discretion, grant consent to make the election provided the shareholder enters into a closing agreement with the Commissioner that requires the shareholder to pay an amount sufficient

to eliminate any prejudice to the United States government as a consequence of the shareholder's inability to file amended returns for closed taxable years.

(4) *Procedural requirements*—(i) *Filing instructions.* A shareholder requests consent under paragraph (f) of this section to make a retroactive election by filing with the Office of the Associate Chief Counsel (International) a ruling request that includes the affidavits required by this paragraph (f)(4). The ruling request must satisfy the requirements, including payment of the user fee, for ruling requests filed with that office.

(ii) *Affidavit from shareholder.* The shareholder, or a person authorized to sign a federal income tax return on behalf of the shareholder, must submit a detailed affidavit describing the events that led to the failure to make a section 1295 election by the election due date, and to the discovery thereof. The shareholder's affidavit must describe the engagement and responsibilities of the qualified tax professional as well as the extent to which the shareholder relied on the tax professional. The shareholder must sign the affidavit under penalties of perjury. An individual who signs for an entity must have personal knowledge of the facts and circumstances at issue.

(iii) *Affidavits from other persons.* The shareholder must submit detailed affidavits from individuals having knowledge or information about the events that led to the failure to make a section 1295 election by the election due date, and to the discovery thereof. These individuals must include the qualified tax professional upon whose advice the shareholder relied, as well as any individual (including an employee of the shareholder) who made a substantial contribution to the return's preparation, and any accountant or attorney, knowledgeable in tax matters, who advised the shareholder with regard to its ownership of the stock of the foreign corporation. Each affidavit must describe the individual's engagement and responsibilities as well as the advice concerning the tax treatment of the foreign corporation that that individual provided to the shareholder. Each affidavit also must include the individual's name, address, and taxpayer identification number, and must be signed by the individual under penalties of perjury.

(iv) *Other information.* In connection with a request for consent under this paragraph (f), a shareholder must provide any additional information requested by the Commissioner.

(v) *Notification of Internal Revenue Service.* The shareholder must notify the branch of the Associate Chief Counsel (International) considering the request for relief under this paragraph (f) if, while the shareholder's request for consent is pending, the Internal Revenue Service begins an examination of the shareholder's return for the retroactive election year or for any subsequent taxable year during which the shareholder holds stock of the foreign corporation.

(vi) *Who requests special consent under this paragraph (f) and who enters into a closing agreement.* The person that requests consent under this paragraph (f) is the person that makes the section 1295 election, as provided in § 1.1295–1T(d). If a shareholder is required to enter into a closing agreement with the Commissioner, as described in paragraph (f)(3)(ii) of this section, rules similar to those under paragraphs (c)(4)(i) (B) through (E) of this section apply for purposes of determining the person that enters into the closing agreement.

(g) *Time for and manner of making a retroactive election*—(1) *Time for making a retroactive election*—(i) *In general.* Except as otherwise provided in paragraph (g)(1)(ii) of this section, a shareholder must make a retroactive election, in the manner provided in paragraph (g)(2) of this section, on or before the due date, as extended, for the shareholder's return—

(A) In the case of a shareholder that makes a retroactive election pursuant to paragraph (b) or (e) of this section, for the taxable year in which the shareholder determines or reasonably should have determined that the foreign corporation was a PFIC; or

(B) In the case of a shareholder that obtains the consent of the Commissioner pursuant to paragraph (f) of this section for the taxable year in which such consent is granted.

(ii) *Transition rule.* A shareholder that files a Protective Statement for a taxable year described in paragraph (c)(5)(ii) of this section may make a retroactive election by the due date, as extended, for the return for the first taxable year ended after January 2, 1998 even if the shareholder determined or should have determined that the foreign corporation was a PFIC for a year described in paragraph (c)(5)(ii) of this section at any time on or before January 2, 1998.

(iii) *Ownership not required at time retroactive election is made.* The shareholder need not own shares of the foreign corporation at the time the shareholder makes a retroactive election with respect to the foreign corporation.

(2) *Manner of making a retroactive election.* A shareholder that has satisfied the requirements of paragraph (b) or (e) of this section, or a shareholder that has been granted consent under paragraph (f) of this section, must make a retroactive election in the manner provided in Form 8621 for making a section 1295 election, and must attach Form 8621 to an amended return for the later of the retroactive election year or the earliest open taxable year of the shareholder. The shareholder also must file an amended return for each of its subsequent taxable years affected by the retroactive election. In each amended return the shareholder must redetermine its income tax liability for that year to take into account the assessment of PFIC related taxes. If the period of limitations for the assessment of taxes for a taxable year affected by the retroactive election has expired except to the extent the waiver of limitations, described in paragraph (c)(4) of this section, has extended such period, no adjustments, other than consequential changes, may be made to any other items of income, deduction, or credit in that year. In addition, the shareholder must pay all taxes and interest owing by reason of the PFIC and QEF status of the foreign corporation in those years (except to the extent a section 1294 election extends the time to pay the taxes and interest). A shareholder that filed a Protective Statement must attach to Form 8621 filed with each amended return a representation that the shareholder, until the taxable year in which it determined or reasonably should have determined that the foreign corporation was a PFIC, reasonably believed, within the meaning of paragraph (d) of this section, that the foreign corporation was not a PFIC in the taxable year for which the amended return is filed, and in all other taxable years to which the Protective Statement applies. A shareholder that entered into a closing agreement must comply with the terms of that agreement, as provided in paragraph (f)(3)(ii) of this section, to eliminate any prejudice to the United States government's interests, as described in paragraph (f)(3) of this section.

(3) *Who makes the retroactive election.* The person that makes the retroactive election is the person that makes the section 1295 election, as provided in § 1.1295–1T(d). A partner, shareholder, or beneficiary for which a pass through entity, as described in paragraphs (c)(4)(i)(B) through (D) of this section, filed a Protective Statement may make a retroactive election, if the pass through entity completely terminates its business or otherwise ceases to exist.

(4) *Other elections*—(i) *Section 1291(d)(2) election.* If the foreign

corporation for which the shareholder makes a retroactive election will be treated as an unpedigreed QEF, as defined in § 1.1291–9(j)(2)(iii), with respect to the shareholder, the shareholder may make an election under section 1291(d)(2) to purge its holding period of the years or parts of years before the effective date of the retroactive election. If the qualification date, within the meaning of § 1.1291–9(e) or 1.1291–10(e), falls in a taxable year for which the period of limitations has expired, the shareholder may treat the first day of the retroactive election year as the qualification date. The shareholder may make a section 1291(d)(2) election at the time that it makes the retroactive election, but no later than two years after the date that the amended return in which the retroactive election is made is filed. For the requirements for making a section 1291(d)(2) election, see §§ 1.1291–9 and 1.1291–10.

(ii) *Section 1294 election.* A shareholder may make an election under section 1294 to extend the time for payment of tax on the shareholder's pro rata shares of the ordinary earnings and net capital gain of the foreign corporation reported in the shareholder's amended return, and section 6621 interest attributable to such tax, but only to the extent the tax and interest are attributable to earnings that have not been distributed to the shareholder. The shareholder must make a section 1294 election for a taxable year at the time that it files its amended return for that year, as provided in paragraph (g)(1) of this section. For the requirements for making a section 1294 election, see § 1.1294–1T.

(h) *Effective date.* The rules of this section are effective as of January 2, 1998.

Par. 13. Section 1.1297–3T(c) is added to read as follows:

§ 1.1297–3T Deemed sale election by a United States person that is a shareholder of a passive foreign investment company (temporary).

* * * * *

(c) *Application of deemed dividend election rules.*—(1) *In general.* A shareholder of a former PFIC, within the meaning of § 1.1291–9(j)(2)(iv), that was a controlled foreign corporation, within the meaning of section 957(a) (CFC), during its last taxable year as a PFIC under section 1296(a), may apply the rules of section 1291(d)(2)(B) and § 1.1291–9 to an election under section 1297(b)(1) and this section made by the time and in the manner provided in paragraph (b) of this section.

(2) *Transition rule.* If the time for making an election under this section, as provided in paragraph (b) of this section, expired before January 2, 1998, a shareholder that applied rules similar to the rules of section 1291(d)(2)(A) and § 1.1291–10 to an election under this section made with respect to a corporation that was a CFC during its last taxable year as a PFIC under section 1296(a) may file an amended return for the taxable year that includes the termination date, as defined in paragraph (a) of this section, and apply the rules of section 1291(d)(2)(B) and § 1.1291–9 at any time before the expiration of the period of limitations for the assessment of taxes for that taxable year.

(3) *Effective date.* The rules of this paragraph are effective as of January 2, 1998.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 14. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 15. In § 602.101, paragraph (c) is amended by adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part of section where identified and described	Current OMB control No.
* * * * *	
1.1295–1T	1545–1555
1.1295–3T	1545–1555
* * * * *	

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: December 15, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–33985 Filed 12–31–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40 and 48

[TD 8748]

RIN 1545–AU53

Gasoline and Diesel Fuel Excise Tax; Special Rules for Alaska; Definitions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the application of the diesel fuel excise tax to fuel used in Alaska. This document also contains final regulations relating to the gasoline and diesel fuel excise tax definitions. The regulations implement certain changes made by the Omnibus Budget Reconciliation Act of 1993 and the Small Business Job Protection Act of 1996. They affect certain enterers, refiners, retailers, terminal operators, throughputters, wholesale distributors, and users.

DATES: These regulations are effective January 2, 1998. For dates of applicability of these regulations, see §§ 48.4082–5(h) and 48.6715–1(a)(3).

FOR FURTHER INFORMATION CONTACT: Frank Boland, (202) 622–3130 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 4081 imposes a tax on certain removals, entries, and sales of diesel fuel. However, under section 4082, tax is not imposed if, among other conditions, the diesel fuel is indelibly dyed in accordance with Treasury regulations. Section 1801 of the Small Business Job Protection Act of 1996 amends section 4082 to create an exception to the dyeing requirement that effectively applies only to diesel fuel that is removed, entered, or sold in Alaska.

Temporary regulations (TD 8693) relating to this change were published in the **Federal Register** on December 17, 1996 (61 FR 66215) along with a notice of proposed rulemaking (REG–247678–96) cross-referencing the temporary regulations (61 FR 66246). The notice of proposed rulemaking also proposed other changes to the gasoline and diesel fuel excise tax regulations that were not contained in the temporary regulations.

A public hearing was neither requested nor held. After consideration of written comments, the proposed regulations are adopted as revised by

this Treasury decision. Comments and revisions are discussed below.

Explanation of Provisions

The proposed regulations provide a definition of kerosene for purposes of the diesel fuel tax. Several commentators questioned this proposal. Because the IRS is continuing its review of this issue, the final regulations do not define kerosene. However, a definition may be included in a future Treasury decision.

The proposed regulations also include changes to the effective date of other proposed regulations that were published in the **Federal Register** on March 14, 1996 (61 FR 10490). Those regulations propose requirements relating to dye injection equipment and are not being finalized at this time. However, the IRS appreciates the concern expressed by several commentators that, as revised, the proposed effective dates still would not give taxpayers sufficient time to comply with the proposed requirements. Thus, the final dye injection regulations will provide a longer period of time between the publication date and the effective date than was proposed.

In response to comments, these final regulations modify the definition of terminal to exclude an otherwise qualifying facility that stores only taxed gasoline and taxed, undyed diesel fuel. As a result of this modification, tax will not be imposed again when the fuel is removed from this type of facility.

The final regulations generally adopt as proposed the provisions dealing with diesel fuel that is removed, entered, or sold in Alaska. However, several comments suggested that the definition of qualified dealer in the proposed regulations was too narrow and prevented unlicensed vendors from selling diesel fuel for exempt uses. In response, the final regulations expand the definition of qualified dealer to include unlicensed diesel fuel retailers that are registered by the IRS under specified conditions. As a result of this modification, many retailers that serve remote communities in Alaska will be able to buy diesel fuel tax free for resale for nontaxable uses.

The final regulations also make minor modifications to existing gasoline and diesel fuel regulations. For example, existing regulations generally require gasoline and diesel fuel refund claims to be filed with the same service center where the claimant's income tax return is filed. Because all excise tax refund claims are now processed at the Cincinnati Service Center, this regulatory provision is removed.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that 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 a collection of information on small entities, 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, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Frank Boland, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Parts 40 and 48

Excise taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 40 and 48 are amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read in part as follows:

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

§ 40.6011(a)–1 [Amended]

Par. 2. Section 40.6011(a)–1(b)(2)(vi) is amended by removing the language "a taxable fuel registrant" and adding "registered under section 4101" in its place.

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 3. The authority citation for part 48 is amended by removing the entry for § 48.4082–5T and adding an entry in numerical order to read in part as follows:

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

Section 48.4082–5 also issued under 26 U.S.C. 4082. * * *

Par. 4. Section 48.4081–1 is amended as follows:

1. Paragraph (b) is amended by:

a. Adding a definition in alphabetical order; and

b. Revising the definition of *terminal.*

2. Paragraph (c)(1)(i) is amended by removing the language "any mixture" and adding "any taxable fuel" in its place and by removing the language "and that consists of" and adding "by mixing" in its place.

3. Paragraph (d) is revised.

The addition and revisions read as follows:

§ 48.4081–1 Taxable fuel; definitions.

* * * * *

(b) * * *

Aviation gasoline means all special grades of gasoline that are suitable for use in aviation reciprocating engines, as described in ASTM Specification D 910 and Military Specification MIL–G–5572. The ASTM specification may be obtained from the American Society for Testing and Materials and the military specification from the Standardization Document Order Desk at the addresses provided in paragraph (c)(2)(i) of this section.

* * * * *

Terminal means a taxable fuel storage and distribution facility that is supplied by pipeline or vessel and from which taxable fuel may be removed at a rack. However, the term does not include any facility at which gasoline blendstocks are used in the manufacture of products other than finished gasoline and from which no gasoline is removed. Also, effective January 2, 1998, the term does not include any facility operated by a taxable fuel registrant if all of the finished gasoline and diesel fuel (other than diesel fuel dyed in accordance with § 48.4082–1(b)) stored at the facility has been previously taxed under section 4081 upon removal from a refinery or terminal.

* * * * *

(d) *Effective date.* This section is applicable January 1, 1994, except that in paragraph (b) of this section the definition of aviation gasoline and the third sentence in the definition of terminal are effective January 2, 1998.

§ 48.4082–5T [Redesignated as § 48.4082–5]

Par. 5. Section 48.4082–5T is redesignated as § 48.4082–5 and the language "(temporary)" is removed from the section heading.

Par. 6. Section 48.4082–5, as redesignated, is amended as follows:

1. Paragraph (b) is amended by revising the definition of *qualified dealer.*

2. Paragraphs (f) and (g) are redesignated as paragraphs (g) and (h), respectively.

3. A new paragraph (f) is added.

4. Paragraph (h), as redesignated, is revised.

The addition and revisions read as follows:

§ 48.4082–5 Diesel fuel; Alaska

* * * * *

(b) * * *

Qualified dealer means any person that holds a qualified dealer license from the state of Alaska or has been registered by the district director as a qualified retailer. The district director will register a person as a qualified retailer only if the district director—

(1) Determines that the person, in the course of its trade or business, regularly sells diesel fuel for use by its buyer in a nontaxable use; and

(2) Is satisfied with the filing, deposit, payment, and claim history for all federal taxes of the person and any related person.

* * * * *

(f) *Registration.* With respect to each person that has been registered as a qualified retailer by the district director, the rules of § 48.4101–1(g), (h), and (i) apply.

* * * * *

(h) *Effective date.* This section is applicable with respect to diesel fuel removed or entered after December 31, 1996. A person registered by the district director as a qualified retailer before April 2, 1998 may be treated, to the extent the district director determines appropriate, as a qualified dealer for the period before that date.

§ 48.6416(b)(4)–1 [Removed]

Par. 7. Section 48.6416(b)(4)-1 is removed.

§ 48.6421–3 [Amended]

Par. 8. In § 48.6421–3, paragraph (d)(2) is amended by removing the last sentence.

§ 48.6427–3 [Amended]

Par. 9. In § 48.6427–3, paragraph (d)(2) is amended by removing the last sentence.

Par. 10. In § 48.6715–1, paragraph (a)(3) is revised to read as follows:

§ 48.6715–1 Penalty for misuse of dyed diesel fuel.

(a) * * *

(3) The alteration or attempted alteration occurs in an exempt area of Alaska after September 30, 1996.

* * * * *

§ 48.6715–2T [Removed]

Par. 11. Section 48.6715–2T is removed.

Approved: November 6, 1997.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–33988 Filed 12–31–97; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5937–7]

Final Determination to Extend Deadline for Promulgation of Action on Section 126 Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is extending by an additional three-day period the deadline for taking final action on petitions that eight States have submitted to require EPA to make findings that sources upwind of those States contribute significantly to nonattainment problems in those States. Under the Clean Air Act (CAA), EPA is authorized to grant this time extension if EPA determines that the extension is necessary, among other things, to meet the purposes of the Act's rulemaking requirements. By this document, EPA is making that determination.

EFFECTIVE DATE: This action is effective as of December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Howard J. Hoffman, Office of General Counsel, MC–2344, 401 M St., SW, Washington, D.C. 20460, (202) 260–5892.

SUPPLEMENTARY INFORMATION:

I. Background

Today's action follows closely EPA's final actions taken by notice dated October 22, 1997 (62 FR 54769) and November 20, 1997 (62 FR 61914). Familiarity with those documents is assumed, and background information in them will not be repeated here.

In the November 20, 1997 document, EPA extended by one month, pursuant to its authority under CAA section 307(d)(10), the time-frame for taking final action on petitions submitted by Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont under CAA section 126. This extension established the deadline at December 14, 1997, but because that date fell on a Sunday, the deadline became the following Monday, December 15, 1997. In the November 20, 1997 document, EPA indicated that it was reserving its option to extend the date for final action by all or part of the remaining four months of the six-month extension period provided under section 307(d)(10).

EPA is today extending the deadline for an additional three days, to December 18, 1997. In the November 20, 1997 document, EPA justified the second one-month extension as necessary in part to allow the agency, working with the section 126 petitioners and other interested parties, to conclude the process for determining an appropriate schedule for action on the section 126 petitions. This schedule would include, as important elements, timetables for proposed rulemaking, a public hearing, and a public comment period. In this manner, the extension furthered the purposes of section 307(d)(10) by promoting public participation in the rulemaking process.

EPA believes that these same reasons continue to apply to favor another, brief extension, at this time. In particular, EPA seems to be in the final stages of finalizing with the section 126 petitioners an appropriate schedule for section 126 rulemaking. Accordingly, EPA again concludes today that extending the date for action on the section 126 petitions for another three days is necessary.

As EPA indicated in its previous notices, EPA, even with today's action, continues not to use the entire six months provided under section 307(d)(10) for the extension. EPA continues to reserve the right to apply the remaining period, or a portion thereof, as an additional extension, if necessary, immediately following the conclusion of the three-day period, or to apply the remaining time to the period following EPA's proposed rulemaking.

II. Final Action

A. Rule

Today, EPA is determining, under CAA section 307(d)(10), that an additional three-day period is necessary to assure the development of an appropriate schedule for rulemaking on the section 126 petitions, which schedule would allow EPA adequate time to prepare a notice for proposal that will best facilitate public comment, as well as allow the public sufficient time to comment. Under this extension, the date for action on each of the section 126 petitions is December 18, 1997.

B. Notice-and-Comment Under the Administrative Procedures Act (APA)

This document is a final agency action, but may not be subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make a determination that the deadline for action on the section 126 petitions should be extended, Congress may not have intended such a determination to be subject to notice-and-comment rulemaking. However, to the extent that this determination is subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Providing notice and comment would be impracticable because of the limited time provided for making this determination, and would be contrary to the public interest because it would divert agency resources from the critical substantive review of the section 126 petitions.

C. Effective Date Under the APA

Today's action will be effective on December 15, 1997. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to mandate an earlier effective date. Today's action—a deadline extension—must take effect immediately because its purpose is to move back by a three-day period the December 15, 1997 deadline for the section 126 petitions. Moreover, EPA intends to use immediately the new extension period to continue to develop an appropriate schedule for ultimate action on the section 126 petitions, and to continue to develop the technical analysis needed to develop the notice of proposed rulemaking. These reasons support an effective date prior to 30 days after the date of publication.

D. Executive Order 12866

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

E. Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate. In addition, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, EPA must have developed a small government agency plan. EPA has determined that these requirements do not apply to today's action because this rulemaking (i) is not a Federal mandate—rather, it simply extends the date for EPA action on a rulemaking; and (ii) contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must propose a regulatory flexibility analysis assessing the impact on small entities of any rule subject to the notice-and-comment rulemaking requirements. Because this action is exempt from such requirements, as described above, it is not subject to RFA.

G. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted, by the date of publication of this rule, 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 General Accounting Office. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Paperwork Reduction Act

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

I. Judicial Review

Under CAA section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the District of Columbia within 60 days of January 2, 1998.

Dated: December 15, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–34199 Filed 12–31–97; 8:45 am]

BILLING CODE 6560–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–97–3145]

RIN No. 2127–AB85

Federal Motor Vehicle Safety Standards; Head Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Correcting amendments.

SUMMARY: On April 8, 1997, (62 FR 16718) NHTSA published a final rule amending Standard No. 201, "Occupant Protection in Interior Impact," to include another phase-in option, allow manufacturers to carry forward credits for vehicles certified to the free-motion headform impact requirements prior to the beginning of the phase-in period, exclude buses with a GVWR of more than 3,860 kilograms (8,500 pounds), specify that all attachments to the vehicle upper interior components are to remain in place during compliance testing, and make other changes to the test procedure to clarify some areas of confusion. This document corrects minor errors in S2 and S8.12(a)(1) of Standard No. 201 (49 CFR 571.201).

DATES: The amendments are effective on January 2, 1998.

FOR FURTHER INFORMATION CONTACT: The following persons at the NHTSA, 400 Seventh Street, SW, Washington, DC 20590.

For non-legal issues: Dr. William Fan, Office of Crashworthiness, NPS–11, telephone (202) 366–4922, facsimile (202) 366–4329, electronic mail "bfan@nhtsa.dot.gov".

For legal issues: Steve Wood, Office of the Chief Counsel, NCC–20, telephone (202) 366–2992, facsimile (202) 366–3820, electronic mail "swood@nhtsa.dot.gov".

SUPPLEMENTARY INFORMATION:

I. Background

Federal Motor Vehicle Safety Standard No. 201 "Occupant Protection in Interior Impact," is intended to reduce deaths and injuries resulting from occupant impacts with vehicle interiors. On April 8, 1997, NHTSA published a final rule (62 FR 16718) amending Standard No. 201 to (1) include another phase-in option, (2) allow manufacturers to carry forward credits for vehicles certified to the free-motion headform impact requirements prior to the beginning of the phase-in

period, (3) exclude buses with a GVWR of more than 3,860 kilograms (8,500 pounds), (4) specify that all attachments to the vehicle upper interior components are to remain in place during compliance testing, and (5) make other changes to the test procedure to clarify some areas of confusion. This rule corrects minor errors in the previous final rule.

Since the publication of the April 1997 final rule, NHTSA received two petitions for reconsideration from: (1) The American Automobile Manufacturers Association (AAMA) and (2) ASC, Incorporated. NHTSA will respond to those petitions through a notice to be published in the **Federal Register** later this year.

II. Summary of the Corrections

NHTSA has discovered a few discrepancies between the preamble and the regulatory text of the April 1997 final rule that require corrections. NHTSA is making those corrections through this notice.

The corrections are not substantive. The first correction is in the wording of 49 CFR 571.201, S2. "*Application*" to make the section to be consistent with the statement in the preamble of the final rule. It is clearly stated in the preamble that requirements of S6 do not apply to buses with a GVWR of more than 3,860 kilograms (8,500 pounds). The regulatory text incorrectly indicates, however, that the requirements of S6 do not apply to buses with a GVWR of 3,860 kilograms (8,500 pounds) or *less*. As indicated by the preamble, NHTSA intended that buses with a GVWR greater than 3,860 kilograms (8,500 pounds) be excluded from the requirements of S6. The second correction amends 49 CFR 571.201, S8.12(a)(1) to clarify the location of the rearmost head center of gravity for the front outboard seating position (CG-F2) and make the regulatory text consistent with the definition of the seating reference point. As published, S8.12(a)(1) called for locating the head center of gravity with the seat in its rearmost adjustment position. NHTSA notes that a seat may be capable of adjustment to positions both forward and rearward of the normal design positions used for driving or riding. The agency did not intend that an extreme rearward adjustment, which is outside the range of adjustment for normal use by drivers or passengers, be used for locating the head center of gravity. Accordingly, S8.12(a)(1) is being corrected so that location of the head center of gravity may be based on the seat being adjusted to its rearmost normal design position.

As stated above, these amendments are effective upon publication of this notice. These amendments are merely technical corrections of the final rule that was published on April 8, 1997. They impose no new substantive requirements. Therefore, NHTSA finds for good cause that any notice of proposed rulemaking and opportunity for comment on these amendments are not necessary. Because of the non-substantive nature of the amendments, NHTSA also finds for good cause that making the rule effective upon publication is in the public interest.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles.

Accordingly, 49 CFR Part 571 is corrected by making the following correcting amendments:

PART 571—[AMENDED]

1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. S2 and S8.12(a)(1) of 49 CFR 571.201 are corrected to read as follows:

§ 571.201 Standard No. 201; Occupant protection in interior impact.

* * * * *

S2. *Application.* This standard applies to passenger cars and to multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kilograms or less, except that the requirements of S6 do not apply to buses with a GVWR of more than 3,860 kilograms.

* * * * *

S8.12 * * *

(a) * * *

(1) *Location of rearmost CG–F (CG–F2).* For front outboard designated seating positions, the head center of gravity with the seat in its rearmost normal design driving or riding position (CG–F2) is located 160 mm rearward and 660 mm upward from the seating reference point.

* * * * *

Issued on December 4, 1997.

Ricardo Martinez,

Administrator.

[FR Doc. 97–34052 Filed 12–31–97; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 63, No. 1
Friday, January 2, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 309

RIN 3064–AC10

Disclosure of Information

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC proposes to amend its regulations governing the public disclosure of information to reflect recent changes to the Freedom of Information Act (FOIA) as a result of the enactment of the Electronic Freedom of Information Act Amendments of 1996 (E–FOIA). Among other things, this proposed rule implements expedited and "multi-track" FOIA processing procedures; implements the processing deadlines and appeal rights created by E–FOIA; and describes the expanded range of records available to the public through the FDIC's Public Reading Room and the FDIC's Internet World Wide Web page.

DATES: Comments must be submitted on or before February 2, 1998.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number: (202) 898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street N.W., Washington D.C. 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Valerie J. Best, Assistant Executive Secretary, Office of the Executive Secretary, (202) 898–3812; Linda Rego, Senior Attorney, Legal Division, (202) 898–7408.

SUPPLEMENTARY INFORMATION:

Section-by-Section Analysis

The Electronic Freedom of Information Act Amendments of 1996 (E–FOIA), Public Law 104–231, amended the Freedom of Information Act (FOIA), 5 U.S.C. 552. Among other things, E–FOIA requires agencies to promulgate regulations that provide for expedited processing of certain requests for records and permits agencies to promulgate regulations that provide for multitrack processing of requests. Changes are proposed to 12 CFR part 309 to comply with the E–FOIA requirements for expedited processing. The FDIC also is proposing to implement multitrack processing. In addition, the FDIC is proposing changes to the section on fees and fee waivers, and portions of this part have been reorganized and streamlined.

Section 309.1 has been expanded to clarify the purpose and scope of the various sections found within part 309. Section 309.4 has been streamlined by eliminating the lengthy list of various offices to contact for different categories of publicly available records and, instead, identifying the FDIC's public reading room, or "Public Information Center", and the FDIC World Wide Web page as primary sources of FDIC information. This section also describes the information that is made available for inspection or copying, either in the FDIC's reading room or over the Internet, as required by E–FOIA. The FDIC notes that the records provided over the Internet cover a much smaller scope than those available in the FDIC's reading room because the E–FOIA requirement to provide records over the Internet covers only records created by the FDIC after November 1, 1996. However, the FDIC is increasing the resources available over the Internet on the FDIC World Wide Web page found at: http://www.fdic.gov. The FDIC also publishes a pamphlet entitled "Symbol of Confidence" which describes the FDIC's structure and lists sources to contact for information about the FDIC or other assistance. The "Symbol of Confidence" is available on the FDIC World Wide Web page. Copies may also be obtained through the FDIC's Public Information Center.

Section 309.5 describes the FDIC's procedures for processing FOIA requests. This section has been extensively revised to reflect the changes required by E–FOIA. The proposed rule provides for multitrack processing. Fast-track processing will apply to records that are easily identifiable by the Freedom of Information office staff (FOIA/PA Unit) and that have already been cleared for release to the public. Fast-track requests will be handled as expeditiously as possible, in the order in which they are received.

All information requests that do not meet the fast-track processing standards will be handled under regular processing procedures. A requester who desires fast-track processing but whose request does not meet those standards may contact the FOIA/PA Unit staff to narrow the request so that it will qualify for fast-track processing. The statutory time limit for regular-track processing would be extended to twenty business days, pursuant to E–FOIA, from the previous ten business days.

Expedited processing may be provided where a requester has demonstrated a compelling need for the records, or where the FDIC has determined to expedite the response. The time limit for expedited processing is set at ten business days, with expedited procedures available for an appeal of the FDIC's determination not to provide expedited processing. Under E–FOIA, there are only two types of circumstances that can meet the compelling need standard: Where failure to obtain the records expeditiously could pose an imminent threat to the life or physical safety of a person, or where the requester is a person primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged agency activity. For ease of administration and consistency, the proposal uses the term "representative of the news media", to describe a person primarily engaged in disseminating information, because this term is used for the FOIA fee schedule, and thus, is known to those familiar with FOIA and the FDIC's rules. To demonstrate a compelling need, a requester must submit a certified statement, a sample of which may be obtained from the FOIA/PA Unit.

Section 309.5(f) contains the FOIA fee schedules and the standards for waiver of fees. The fee schedule provisions have been revised to clarify that the processing time of a FOIA request does

not begin in cases (1) where advance payment is required until payment is received, or (2) where a person has requested a waiver of the fees and has not agreed to pay the fees if the waiver request is denied.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. These amendments simplify some of the procedures regarding release of information and require disclosure of information in certain instances in accordance with law. The requirements to disclose apply to the FDIC; therefore, they should not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act Analysis

The collection of information contained in this proposed rule is found at 12 CFR 309.5(c) and has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer Alexander Hunt, New Executive Office Building, Room 3208, Washington, DC 20503, with copies of such comments to Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), Federal Deposit Insurance Corporation, Room F–4080, 550 17th Street NW, Washington, DC 20429. All comments should refer to part 309. OMB is required to make a decision concerning the collections of information contained in the proposed regulations between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication. This does not affect the deadline for the public to comment to the FDIC on the proposed regulation.

Title of collection: Requests for records pursuant to the Freedom of Information Act.

Summary of the collection: The name, address and telephone number of the requester; a statement whether the requester is an educational institution, noncommercial scientific institution, or news media representative; a statement agreeing to pay applicable fees or requesting a waiver or reduction of fees; and the form or format of responsive information requested, if other than paper copies.

Respondents: Persons who desire to obtain records pursuant to the Freedom of Information Act.

Estimate of Annual Burden:

Number of requests—1,000.

Time required to prepare a request—15 minutes.

Total annual burden hours—250 hours.

List of Subjects in 12 CFR Part 309

Banks, banking, Credit, Freedom of information, Privacy.

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation is proposing to amend title 12, chapter III, of the Code of Federal Regulations as follows:

PART 309—DISCLOSURE OF INFORMATION

1. The authority citation for part 309 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1819 "Seventh" and "Tenth".

2. Section 309.1 is revised to read as follows:

§ 309.1 Purpose and scope.

This part sets forth the basic policies of the Federal Deposit Insurance Corporation regarding information it maintains and the procedures for obtaining access to such information. Section 309.2 sets forth definitions applicable to this part 309. Section 309.3 describes the types of information and documents typically published in the **Federal Register**. Section 309.4 explains how to access public records maintained on the Federal Deposit Insurance Corporation's World Wide Web page and in the Federal Deposit Insurance Corporation's Public Information Center or "PIC", and describes the categories of records generally found there. Section 309.5 implements the Freedom of Information Act (5 U.S.C. 552). Section 309.6 authorizes the discretionary disclosure of exempt records under certain limited circumstances. Section 309.7 outlines procedures for serving a subpoena or other legal process to obtain information maintained by the FDIC.

3. Section 309.2(e) is revised to read as follows:

§ 309.2 Definitions.

* * * * *

(e) The term *record* includes records, files, documents, reports, correspondence, books, and accounts, or any portion thereof, in any form the FDIC regularly maintains them.

* * * * *

4. Section 309.4 is revised to read as follows:

§ 309.4 Publicly available records.

Many records are available upon request or are available for public inspection as noted below. To the extent permitted by law, the FDIC may delete identifying details when it makes available or publishes a final opinion, final order, statement of policy, interpretation or staff manual or instruction. If redaction is necessary, the FDIC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction. If applicable, fees for furnishing records under this section are as set forth in § 309.5(f) except that all categories of requesters shall be charged duplication costs.

(a) *FDIC World Wide Web page.* (1) The following types of documents created on or after November 1, 1996, may be found on the FDIC World Wide Web page located at: http://www.fdic.gov:

(i) Final opinions, including concurring and dissenting opinions, as well as final orders and written agreements, made in the adjudication of cases;

(ii) Statements of policy and interpretations adopted by the Board of Directors that are not published in the **Federal Register**;

(iii) Administrative staff manuals and instructions to staff that affect the public;

(iv) Copies of all records released to any person under § 309.5 that, because of the nature of their subject matter, the FDIC has determined are likely to be requested again;

(v) A general index of the records referred to in paragraph (a)(4) of this section.

(2) Information published on the World Wide Web page is not subject to the fees provision of § 309.5(f), and is freely accessible.

(b) *Public Information Center.* (1) The FDIC maintains a Public Information Center or "PIC" that contains Corporate records that the Freedom of Information Act requires be made available for regular inspection and copying, as well as any records or information the FDIC, in its discretion, has regularly made available to the public. The PIC has extensive materials of interest to the public, including many Reports, Summaries and Manuals used or published by the Corporation that are available for inspection and copying.

(2) The PIC is open from 9:00 am to 5:00 pm, Monday through Friday, excepting Federal holidays. It is located at 801 17th Street, NW, Washington, DC 20006. The PIC may be reached during business hours by calling (800) 276–6003.

(3) The PIC makes efforts to publish records and information of the FDIC on the World Wide Web page, located at http://www.fdic.gov.

(4) The FDIC encourages the public to explore the wealth of resources available at the FDIC Public Information Center and on the Web page designated in paragraph (b)(3) of this section.

5. Section 309.5 is revised to read as follows:

§ 309.5 Procedures for requesting records.

(a) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a requester who seeks records for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request falls within this category, the FDIC will determine the use to which a requester will put the records requested and seek additional information as it deems necessary.

(2) *Direct costs* means those expenditures the FDIC actually incurs in searching for, duplicating, and, in the case of commercial requesters, reviewing records in response to a request for records.

(3) *Duplication* means the process of making a copy of a record necessary to respond to a request for records or for inspection of original records that contain exempt material or that cannot otherwise be directly inspected. Such copies can take the form of paper copy, microfilm, audiovisual records, or machine readable records (*e.g.*, magnetic tape or computer disk).

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(5) *Noncommercial scientific institution* means an institution that is not operated on a commercial basis as that term is defined in paragraph (a)(1) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(6) *Representative of the news media* means any person primarily engaged in gathering news for, or a free-lance journalist who can demonstrate a reasonable expectation of having his or her work product published or broadcast by, an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the general public.

(7) *Review* means the process of examining records located in response to a request for records to determine whether any portion of any record is permitted to be withheld as exempt information. It includes processing any record for disclosure, *e.g.*, doing all that is necessary to excise them or otherwise prepare them for release.

(8) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually and/or by computer using existing programming.

(b) *Making a request for records.* (1) The request shall be submitted in writing to the Office of the Executive Secretary:

(i) By completing the online request form located on the FDIC World Wide Web page, found at http://www.fdic.gov;

(ii) By facsimile clearly marked Freedom of Information Act Request to (202) 898–8778; or

(iii) By sending a letter to the Office of the Executive Secretary, ATTN: FOIA/PA Unit, 550 17th Street, NW, Washington, DC 20429.

(2) The request shall contain the following information:

(i) The name and address of the requester, an electronic mail address, if available, and the telephone number at which the requester may be reached during normal business hours;

(ii) Whether the requester is an educational institution, noncommercial scientific institution, or news media representative;

(iii) A statement agreeing to pay the applicable fees, or a statement identifying a maximum fee that is acceptable to the requester, or a request for a waiver or reduction of fees that satisfies paragraph (f)(1)(x) of this section; and

(iv) The preferred form and format of any responsive information requested, if other than paper copies.

(3) A request for identifiable records shall reasonably describe the records in a way that enables the FDIC's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any of the FDIC's operations.

(c) *Defective requests.* The FDIC need not accept or process a request that does not reasonably describe the records requested or that does not otherwise comply with the requirements of this part. The FDIC may return a defective request, specifying the deficiency. The requester may submit a corrected request, which will be treated as a new request.

(d) *Processing requests*—(1) *Receipt of requests.* Upon receipt of any request that satisfies paragraph (b) of this section, the FOIA/PA Unit, Office of the Executive Secretary, shall assign the request to the appropriate processing schedule pursuant to this section. The date of receipt for any request, including one that is addressed incorrectly or that is referred by another agency, is the date the Office of the Executive Secretary actually receives the request.

(2) *Multi-track processing.* (i) The FDIC provides different levels of processing for categories of requests under this part. Requests for records that are readily identifiable by the Office of the Executive Secretary and that have already been cleared for public release may qualify for fast-track processing. All other requests shall be handled under normal processing procedures, unless expedited processing has been granted pursuant to paragraph (d)(3) of this section.

(ii) The FDIC will make the determination whether a request qualifies for fast-track processing. A requester may contact the FOIA/PA Unit to learn whether a particular request has been assigned to fast-track processing. If the request has not qualified for fast-track processing, the requester will be given an opportunity to refine the request in order to qualify for fast-track processing. Changes made to requests to obtain faster processing must be in writing.

(3) *Expedited processing.* Where a person requesting expedited access to records has demonstrated a compelling need for the records, or where the FDIC has determined to expedite the response, the FDIC shall process the

request as soon as practicable. To show a compelling need for expedited processing, the requester shall provide a statement demonstrating that:

(i) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) The requester can establish that they are primarily engaged in information dissemination as their main professional occupation or activity, and there is urgency to inform the public of the government activity involved in the request; and

(iii) The requester's statement must be certified to be true and correct to the best of the person's knowledge and belief and explain in detail the basis for requesting expedited processing.

(4) *Denial of expedited processing.* A requester seeking expedited processing will be notified whether expedited processing has been granted within ten (10) working days of the receipt of the request. If the requester is denied expedited processing, the requester may file an appeal pursuant to the procedures set forth in paragraph (h) of this section, and the FDIC shall respond to the appeal within ten (10) working days after receipt of the appeal.

(5) *Priority of responses.* Consistent with sound administrative process the FDIC processes requests in the order they are received in the separate processing tracks. However, in the agency's discretion, or upon a court order in a matter to which the FDIC is a party, a particular request may be processed out of turn.

(6) *Notification.* (i) The time for response to requests will be 20 working days except:

(A) In the case of expedited treatment under paragraph (d)(3) of this section;

(B) Where the running of such time is suspended for the calculation of a cost estimate for the requester if the FDIC determines that the processing of the request may exceed the requester's maximum fee provision or if the charges are likely to exceed $250 as provided for in paragraph (f)(1)(v) of this section;

(C) Where the running of such time is suspended for the payment of fees pursuant to paragraphs (d)(6)(i)(B) and (f)(1) of this section; or

(D) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B).

(ii) In unusual circumstances as referred to in paragraph (d)(6)(i)(D) of this section, the time limit may be extended for a period of:

(A) Ten (10) working days as provided by written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; or

(B) Such alternative time period as agreed to by the requester or as reasonably determined by the FDIC when the FDIC notifies the requester that the request cannot be processed in the specified time limit.

(iii) Unusual circumstances may arise when:

(A) The records are in facilities, such as field offices or storage centers, that are not located at the FDIC's Washington office;

(B) The records requested are voluminous or are not in close proximity to one another; or

(C) There is a need to consult with another agency or among two or more components of the FDIC having a substantial interest in the determination.

(7) *Response to request.* In response to a request that satisfies the requirements of paragraph (b) of this section, a search shall be conducted of records maintained by the FDIC in existence on the date of receipt of the request, and a review made of any responsive information located. The FDIC shall notify the requester of:

(i) The FDIC's determination of the request;

(ii) The reasons for the determination;

(iii) If the response is a denial of an initial request or if any information is withheld, the FDIC will advise the requester in writing:

(A) If the denial is in part or in whole;

(B) The name and title of each person responsible for the denial (when other than the person signing the notification);

(C) The exemptions relied on for the denial; and

(D) The right of the requester to appeal the denial to the FDIC's General Counsel within 30 business days following receipt of the notification, as specified in paragraph (h) of this section.

(e) *Providing responsive records.* (1) Copies of requested records shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the FDIC or makes other acceptable arrangements, or the FDIC deems it appropriate to send the documents by another means.

(2) The FDIC shall provide a copy of the record in any form or format requested if the record is readily reproducible by the FDIC in that form or format, but the FDIC need not provide more than one copy of any record to a requester.

(3) By arrangement with the requester, the FDIC may elect to send the responsive records electronically if a substantial portion of the request is in electronic format. If the information requested is made pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, it will not be sent by electronic means unless reasonable security measures can be provided.

(f) *Fees*—(1) *General rules.* (i) Persons requesting records of the FDIC shall be charged for the direct costs of search, duplication, and review as set forth in paragraphs (f)(2) and (f)(3) of this section, unless such costs are less than the FDIC's cost of processing the requester's remittance.

(ii) Requesters will be charged for search and review costs even if responsive records are not located or, if located, are determined to be exempt from disclosure.

(iii) Multiple requests seeking similar or related records from the same requester or group of requesters will be aggregated for the purposes of this section.

(iv) If the FDIC determines that the estimated costs of search, duplication, or review of requested records will exceed the dollar amount specified in the request, or if no dollar amount is specified, the FDIC will advise the requester of the estimated costs (if greater than the FDIC's cost of processing the requester's remittance). The requester must agree in writing to pay the costs of search, duplication, and review prior to the FDIC initiating any records search.

(v) If the FDIC estimates that its search, duplication, and review costs will exceed $250.00, the requester must pay an amount equal to 20 percent of the estimated costs prior to the FDIC initiating any records search.

(vi) The FDIC shall ordinarily collect all applicable fees under the final invoice before releasing copies of requested records to the requester.

(vii) The FDIC may require any requester who has previously failed to pay the charges under this section within 30 calendar days of mailing of the invoice to pay in advance the total estimated costs of search, duplication, and review. The FDIC may also require a requester who has any charges outstanding in excess of 30 calendar days following mailing of the invoice to pay the full amount due, or demonstrate that the fee has been paid in full, prior to the FDIC initiating any additional records search.

(viii) The FDIC may begin assessing interest charges on unpaid bills on the 31st day following the day on which the invoice was sent. Interest will be at the rate prescribed in section 3717 of title

31 of the United States Code and will accrue from the date of the invoice.

(ix) The time limit for the FDIC to respond to a request will not begin to run until the FDIC has received the requester's written agreement under paragraph (f)(1)(iv) of this section, and advance payment under paragraph (f)(1)(v) or (vii) of this section, or payment of outstanding charges under paragraph (f)(1)(vii) or (viii) of this section.

(x) As part of the initial request, a requester may ask that the FDIC waive or reduce fees if disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Determinations as to a waiver or reduction of fees will be made by the Executive Secretary (or designee) and the requester will be notified in writing of his/her determination. A determination not to grant a request for a waiver or reduction of fees under this paragraph may be appealed to the FDIC's General Counsel (or designee) pursuant to the procedure set forth in paragraph (h) of this section.

(2) *Chargeable fees by category of requester.* (i) Commercial use requesters shall be charged search, duplication and review costs.

(ii) Educational institutions, non-commercial scientific institutions and news media representatives shall be charged duplication costs, except for the first 100 pages.

(iii) Requesters not described in paragraph (f)(2) (i) or (ii) of this section shall be charged the full reasonable direct cost of search and duplication, except for the first two hours of search time and first 100 pages of duplication.

(3) *Fee schedule.* The dollar amount of fees which the FDIC may charge to records requesters will be established by the Chief Financial Officer of the FDIC (or designee). The FDIC may charge fees that recoup the full allowable direct costs it incurs. Fees are subject to change as costs change.

(i) *Manual searches for records.* The FDIC will charge for manual searches for records at the basic rate of pay of the employee making the search plus 16 percent to cover employee benefit costs. Where a single class of personnel (*e.g.*, all clerical, all professional, or all executive) is used exclusively, the FDIC, at its discretion, may establish and charge an average rate for the range of grades typically involved.

(ii) *Computer searches for records.* The fee for searches of computerized records is the actual direct cost of the search, including computer time, computer runs, and the operator's time apportioned to the search. The fee for a computer printout is the actual cost. The fees for computer supplies are the actual costs. The FDIC may, at its discretion, establish and charge a fee for computer searches based upon a reasonable FDIC-wide average rate for central processing unit operating costs and the operator's basic rate of pay plus 16 percent to cover employee benefit costs.

(iii) *Duplication of records.* (A) The per-page fee for paper copy reproduction of documents is the average FDIC-wide cost based upon the reasonable direct costs of making such copies.

(B) For other methods of reproduction or duplication, the FDIC will charge the actual direct costs of reproducing or duplicating the documents.

(iv) *Review of records.* The FDIC will charge commercial use requesters for the review of records at the time of processing the initial request to determine whether they are exempt from mandatory disclosure at the basic rate of pay of the employee making the search plus 16 percent to cover employee benefit costs. Where a single class of personnel (*e.g.*, all clerical, all professional, or all executive) is used exclusively, the FDIC, at its discretion, may establish and charge an average rate for the range of grades typically involved. The FDIC will not charge at the administrative appeal level for review of an exemption already applied. When records or portions of records are withheld in full under an exemption which is subsequently determined not to apply, the FDIC may charge for a subsequent review to determine the applicability of other exemptions not previously considered.

(v) *Other services.* Complying with requests for special services, other than a readily produced electronic form or format, is at the FDIC's discretion. The FDIC may recover the full costs of providing such services to the requester.

(4) *Publication of fee schedule and effective date of changes.* (i) The fee schedule is made available on the FDIC World Wide Web page, found at http://www.fdic.gov.

(ii) The fee schedule will be set forth in the "Notice of Federal Deposit Insurance Corporation Records Fees" issued in December of each year or in such "Interim Notice of Federal Deposit Insurance Corporation Records Fees" as may be issued. Copies of such notices may be obtained at no charge from the Office of the Executive Secretary, FOIA/PA Unit, 550 17th Street, NW, Washington, D.C. 20429, and are available on the Web page as noted in paragraph (f)(4)(i) of this section.

(iii) The fees implemented in the December or Interim Notice will be effective 30 days after issuance.

(5) *Use of contractors.* The FDIC may contract with independent contractors to locate, reproduce, and/or disseminate records; provided, however, that the FDIC has determined that the ultimate cost to the requester will be no greater than it would be if the FDIC performed these tasks itself. In no case will the FDIC contract out responsibilities which the Freedom of Information Act (FOIA) (5 U.S.C. 552) provides that the FDIC alone may discharge, such as determining the applicability of an exemption or whether to waive or reduce fees.

(g) *Exempt information.* A request for records may be denied if the requested record contains information which falls into one or more of the following categories.[1] If the requested record contains both exempt and nonexempt information, the nonexempt portions which may reasonably be segregated from the exempt portions will be released to the requester. If redaction is necessary, the FDIC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction. The categories of exempt records are as follows:

(1) Records that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(2) Records related solely to the internal personnel rules and practices of the FDIC;

(3) Records specifically exempted from disclosure by statute, provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that is privileged or confidential;

(5) Interagency or intra-agency memoranda or letters that would not be

[1] Classification of a record as exempt from disclosure under the provisions of this paragraph (g) shall not be construed as authority to withhold the record if it is otherwise subject to disclosure under the Privacy Act of 1974 (5 U.S.C. 552a) or other federal statute, any applicable regulation of FDIC or any other federal agency having jurisdiction thereof, or any directive or order of any court of competent jurisdiction.

available by law to a private party in litigation with the FDIC;

(6) Personnel, medical, and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished records on a confidential basis;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Records that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the FDIC or any agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(h) *Appeals.* (1) Appeals should be addressed to the Office of the Executive Secretary, FDIC, 550 17th Street, NW, Washington, DC 20429.

(2) A person whose initial request for records under this section, or whose request for a waiver of fees under paragraph (f)(1)(x) of this section, has been denied, either in part or in whole, has the right to appeal the denial to the FDIC's General Counsel (or designee) within 30 business days after receipt of notification of the denial. Appeals of denials of initial requests or for a waiver of fees must be in writing and include any additional information relevant to consideration of the appeal.

(3) Except in the case of an appeal for expedited treatment under paragraph (d)(3) of this section, the FDIC will notify the appellant in writing within 20 business days after receipt of the appeal and will state:

(i) Whether it is granted or denied in whole or in part;

(ii) The name and title of each person responsible for the denial (if other than the person signing the notification);

(iii) The exemptions relied upon for the denial in the case of initial requests for records; and

(iv) The right to judicial review of the denial under the FOIA.

(4) If a requester is appealing for denial of expedited treatment, the FDIC will notify the appellant within 10 business days after receipt of the appeal of the FDIC's disposition.

(i) *Records of another agency.* If a requested record is the property of another federal agency or department, and that agency or department, either in writing or by regulation, expressly retains ownership of such record, upon receipt of a request for the record the FDIC will promptly inform the requester of this ownership and immediately shall forward the request to the proprietary agency or department either for processing in accordance with the latter's regulations or for guidance with respect to disposition.

By Order of the Board of Directors.

Dated at Washington, D.C., this 9th day of December 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–34037 Filed 12–31–97; 8:45 am]

BILLING CODE 6714–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 200

RIN: 3220–AB33

General Administration

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to revise its regulations to eliminate the list of Board forms and their descriptions found therein. The Board also proposes to remove the tables which cross-reference Board forms to OMB information collection control numbers and sections in the Code of Federal Regulations. The purpose of these proposed revisions is to eliminate either out-of-date information or information already provided elsewhere in a more usable fashion.

EFFECTIVE DATE: Comments must be received by March 3, 1998.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 754–4701.

SUPPLEMENTARY INFORMATION: Section 200.3 of the Board's regulations currently purports to list all Board forms. This listing is not required by any authority currently in effect and is out-of-date.

Section 200.3 also contains a table which lists Board forms, their OMB information control numbers, and where the information collection is found in the text of the Code of Federal Regulations. Such tables are not required since the Board lists the OMB control number on its forms and in the text of any regulation requiring information collection. See 5 CFR 1320.3(f).

The revised regulation will provide that Board forms may be obtained from Board headquarters or from local Board offices.

The Board, with the agreement of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 200

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, Part 200, Title 20, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—GENERAL ADMINISTRATION

1. The authority citation for part 200 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; § 200.7 also issued under 31 U.S.C. 3717.

2. Section 200.3, "Designation of forms and display of assigned OMB control numbers," is revised to read as follows: § 200.3 Obtaining forms from the Railroad Retirement Board.

Forms used by the Board, including applications for benefits and informational publications, may be obtained from the Board's headquarters at 844 Rush Street, Chicago, Illinois 60611, and from local Board offices.

Dated: December 19, 1997.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–34186 Filed 12–31–97; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–109333–97]

RIN 1545–AV56

Qualified Long-Term Care Insurance Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to consumer protection with respect to qualified long-term care insurance contracts and relating to events that will be considered material changes with respect to long-term care insurance contracts issued prior to January 1, 1997. Changes to the applicable law were made by the Health Insurance Portability and Accountability Act of 1996. The regulations affect issuers of long-term care insurance contracts and individuals entitled to receive payments under these contracts. The regulations are necessary to provide these taxpayers with guidance needed to comply with these changes.

DATES: Written comments must be received by April 2, 1998. Outlines of topics to be discussed at the public hearing scheduled for May 13, 1998, must be received by April 2, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–109333–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG–109333–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may also 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 regulations, Katherine A. Hossofsky, (202) 622–3477; concerning submissions and the hearing, 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) to provide rules under section 7702B of the Internal Revenue Code of 1986 (the "Code"). Section 7702B was added by sections 321 and 325 of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191, 110 Stat. 1936, 2054 and 110 Stat. at 2063) ("HIPAA"). Notice 97–31, 1997–21 I.R.B. 5 (May 6, 1997), provides interim guidance on certain provisions of section 7702B and other provisions of the Code added or amended by HIPAA.

Explanation of Statutory Provisions

Section 7702B establishes the tax treatment for qualified long-term care insurance contracts. Sections 7702B(a)(1) and (3) provide that a qualified long-term care insurance contract is treated as an accident and health insurance contract and that any employer plan providing coverage under a qualified long-term care insurance contract is treated as an accident or health plan with respect to that coverage.

Section 7702B(a)(2) provides that amounts (other than policyholder dividends and premium dividends) received under a qualified long-term care insurance contract are generally excludable from gross income as amounts received for personal injuries and sickness.

Section 213(d)(1)(D) was amended by section 322 of HIPAA to provide that eligible long-term care premiums as defined in section 213(d)(10) are deductible medical expenses.

Under section 7702B(b)(1)(F), a qualified long-term care insurance contract must meet the consumer protection provisions of section 7702B(g). In addition, section 4980C imposes an excise tax on issuers of qualified long-term care insurance contracts that do not provide further consumer protections.

Section 7702B of the Code applies to contracts issued after December 31, 1996. Section 321(f)(2) of HIPAA treats a contract issued before January 1, 1997, as a qualified long-term care insurance contract under section 7702B(b) of the Code, and services provided or reimbursed under such a contract as qualified long-term care services under section 7702B(c) of the Code, provided the contract met the long-term care requirements of the State in which the contract was situsted at the time the contract was issued. Section 321(f)(2) of HIPAA also provides that in the case of an individual covered on December 31, 1996, by a State long-term care plan under section 7702B(f) of the Code, the terms of the plan on that date are treated as a contract meeting the long-term care insurance requirements of that State.

Section 321(f)(4) of HIPAA provides that for purposes of applying sections 101(f), 7702, and 7702A of the Code, neither the issuance of a rider that is treated as a qualified long-term care insurance contract nor the addition of any provision required to conform any other long-term care rider to the requirements applicable to a qualified long-term care insurance contract is treated as a modification or material change of the contract.

Explanation of Provisions

The proposed regulations provide guidance concerning:

- the consumer protection requirements that apply to qualified long-term care insurance contracts under sections 7702B(g), 7702B(b)(1)(F), and 4980C of the Code; and
- the grandfather provisions of section 321(f)(2) of HIPAA under which pre-1997 contracts are treated as qualified long-term care insurance contracts if certain conditions are met.

The standards in the proposed regulations are based on safe harbors that were originally set forth in Notice 97–31. They reflect comments made by consumer representatives, issuers of long-term care insurance, independent sales agents, State regulators of long-term care insurance, and others. The proposed regulations are intended to provide clear and workable rules to assist those who want to ensure that a contract issued before 1997 retains its status as a qualified long-term care insurance contract.

Notice 97–31

Notice 97–31 was issued to provide interim standards for taxpayers to use in interpreting the new long-term care provisions and to facilitate operation of the insurance market by avoiding the need to amend contracts. For example, Notice 97–31 includes interim guidance on the determination of whether an individual is a "chronically ill individual," including safe harbor definitions of the terms "substantial assistance," "hands-on assistance," "standby assistance," "severe cognitive impairment," and "substantial supervision." The standards contained in Notice 97–31 include interim guidance on both the consumer protection provisions and the scope of the statutory grandfather provisions that apply to long-term care insurance contracts issued before 1997.

Consumer Protection Requirements

Under sections 7702B(b)(1)(F), 7702B(g), and 4980C, qualified long-term care insurance contracts and issuers of those contracts are required to satisfy certain provisions of the model act and model regulation promulgated by the National Association of Insurance Commissioners (NAIC) for long-term care insurance as of January 1993. The requirements relate to guaranteed renewability, unintentional lapse, disclosure, prohibitions against post-claims underwriting, inflation protection, and prohibitions against pre-existing conditions exclusions and probationary periods. Section 4980C imposes an excise tax on an issuer of a qualified long-term care insurance contract if, after 1996, the issuer fails to satisfy certain requirements, including requirements relating to application forms, reporting, marketing, appropriateness of recommended purchase, standard format outline of coverage, delivery of a shopper's guide, right to return, outline of coverage, and incontestability. Most of these requirements are based on the NAIC model act and regulation.

The proposed regulations reflect the standards that were set forth in Notice 97–31. For example, the consumer protection requirements will be considered satisfied if a contract complies with State law in a State that has adopted the related NAIC model or a more stringent version of the model.

Pre-1997 Long-Term Care Insurance Contracts

Section 321(f)(2) of HIPAA provides that a contract issued before January 1, 1997, is treated as a qualified long-term care insurance contract if the contract met the "long-term care insurance requirements of the State" in which the contract was situsted at the time it was issued. Under the proposed regulations, the date on which a long-term care insurance contract other than a group long-term care insurance contract is issued is generally the date assigned to the contract by the insurance company. In no event is the issue date earlier than the date on which the policyholder submitted a signed application for coverage to the insurance company. In addition, if the period between the date of application and the date on which the long-term care insurance contract actually becomes effective is substantially longer than under the insurance company's usual business practice, then the issue date is the date the contract becomes effective. For purposes of applying the grandfather rule of section 321(f)(2) to a group long-term care insurance contract, the issue date of the contract is the date the group contract was issued. As a result, coverage for an individual who joins a grandfathered group long-term care insurance contract on or after January 1, 1997, is accorded the same treatment under section 321(f)(2) as is accorded coverage for those who joined the group before that date.

For purposes of applying section 321(f)(2) of HIPAA to long-term care insurance contracts issued before January 1, 1997, a material change in the contract generally is considered the issuance of a new contract. Notice 97–31 provides that a material change includes any change in the terms of the contract altering the amount or timing of any item payable by the policyholder (or certificate holder), the insured, or the insurance company. Notice 97–31 also provides that the exercise of an option or right granted to a policyholder under a qualified long-term care insurance contract as in effect on December 31, 1996, does not constitute a material change.[1]

After Notice 97–31 was issued, commentators recommended that certain common practices should not cause long-term care insurance contracts issued before January 1, 1997, to lose their grandfathered status. In response to these comments, the proposed regulations provide additional exceptions to the general rule that a material change in a long-term care insurance contract issued before January 1, 1997, will be considered the issuance of a new contract.

- The proposed regulations provide that the exercise of any right provided to a policyholder (*i.e.*, a right that can be exercised without the issuer's consent and without other conditions, such as underwriting) or the addition of any right that is required by State law to be provided to the policyholder will not be treated as a material change to a long-term care insurance contract.
- In addition, the proposed regulations provide that the following practices will not be treated as material changes for purposes of section 7702B: (1) Any change in the mode of premium payment, such as a change from paying premiums monthly to quarterly; (2) any classwide increase or decrease in premiums for contracts that have been issued on a guaranteed renewable basis; (3) a reduction in premiums due to the purchase of a long-term care insurance policy by a member of the policyholder's family; (4) any reduction in coverage (with correspondingly lower premiums) made at the request of a policyholder; (5) the addition, without an increase in premiums, of alternative forms of benefits that may be selected by the policyholder; (6) the purchase of a rider to increase benefits under a pre-1997 contract if the rider would constitute a qualified long-term care insurance contract if it were a separate contract;[2] (7) the deletion of a rider or provision of a contract (called an HHS rider) that prohibited coordination of benefits with Medicare; and (8) the effectuation of a continuation or conversion of coverage right under a group contract following an individual's ineligibility for continued coverage under the group contract.

The proposed regulations include examples illustrating certain of these standards. The exceptions to the general rule that a material change results in the issuance of a new contract apply solely for purposes of determining whether a pre-1997 insurance contract is treated as a qualified long-term care insurance contract under section 7702B.[3]

Comments are requested on these standards, including (1) whether the material change rules in the proposed regulations should be limited to pre-1997 long-term care insurance contracts that cannot have cash surrender value; (2) whether there are any conditions under which the expansion of coverage under a group long-term care insurance contract in connection with a corporate merger, acquisition or similar transaction should not constitute a material change; and (3) whether the extension of a group long-term care contract to a collective bargaining unit is a material change in all cases. For

[1] The definition of material change in Notice 97–31 is narrower than the definition of material change for purposes of other sections of the Code. For example, the exercise of an option in a life insurance contract results in the loss of grandfathering under section 7702 if the option only guarantees terms that are likely to be available when the option is exercised.

[2] Thus for example, the only coverage provided under the rider must be coverage for qualified long-term care services and the purchase must satisfy the consumer protection requirements of section 7702B(g) of the Code. (This would not include protections that apply only the first time a contract is purchased, *i.e.*, subsections (g)(2)(A)(i)(III), (V), (VII) (other than section 6B of the NAIC model regulation), and (X), (g)(3), and (g)(4) of section 7702B. Similarly, subsections (c)(1)(A)(i) and (c)(2) of section 4980C would apply only the first time a contract is purchased.)

[3] The exceptions depart from the definition of material change that would apply for purposes of other sections of the Code, including sections 7702, 7702A, 101(f), and 264. These exceptions are consistent with the purpose of section 7702B, which has the effect of expanding the tax benefits for certain long-term care insurance contracts. By contrast, sections 7702, 7702A, 101(f), and 264, for example, limit the tax benefits associated with certain insurance products and, unlike pre-1997 long-term care insurance contracts, apply to contracts with a substantial investment orientation.

example, should the extension of a group long-term care contract to a bargaining unit after 1997 be treated as a material change if the bargaining agreement for the unit has not been renewed since before the group contract was first adopted?

Comments also are requested on what the effective date of the final regulations should be. It is intended that the regulations will not be effective until after the end of a specified period following adoption of the final regulations. Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect. In addition, until further notice, taxpayers may continue to rely on Notice 97–31.

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 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, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this 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 comments that are submitted timely to the IRS (a signed original and eight (8) copies). All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 13, 1998, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by April 2, 1998 and submit an outline of the topics to be discussed and the time to be devoted to each topic by April 2, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Katherine A. Hossofsky, Office of Assistant Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended 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. Sections 1.7702B–1 through 1.7702B–2 are added to read as follows:

§ 1.7702B–1 Consumer protection provisions.

(a) *In general.* Under sections 7702B(b)(1)(F), 7702B(g), and 4980C, qualified long-term care insurance contracts and issuers of those contracts are required to satisfy certain provisions of the Long-Term Care Insurance Model Act (Model Act) and Long-Term Care Insurance Model Regulation (Model Regulation) promulgated by the National Association of Insurance Commissioners (NAIC), as adopted as of January 1993. The requirements for qualified long-term care insurance contracts under sections 7702B(b)(1)(F) and 7702B(g) relate to guaranteed renewal or noncancellability, prohibitions on limitations and exclusions, extension of benefits, continuation or conversion of coverage, discontinuance and replacement of policies, unintentional lapse, disclosure, prohibitions against post-claims underwriting, minimum standards, inflation protection, prohibitions against pre-existing conditions exclusions and probationary periods, and prior hospitalization. The requirements for qualified long-term care insurance contracts under section 4980C relate to application forms and replacement coverage, reporting requirements, filing requirements for marketing, standards for marketing, appropriateness of recommended purchase, standard format outline of coverage, delivery of a shopper's guide, right to return, outline of coverage, certificates under group plans, policy summary, monthly reports on accelerated death benefits, and incontestability period.

(b) *Coordination with State requirements*—(1) *Contracts issued in a State that imposes more stringent requirements.* If a State imposes a requirement that is more stringent than the analogous requirement imposed by section 7702B(g) or 4980C, then, under section 4980C(f), compliance with the more stringent requirement of State law is considered compliance with the parallel requirement of section 7702B(g) or 4980C. The principles of paragraph (b)(3) of this section apply to any case in which a State imposes a requirement that is more stringent than the analogous requirement imposed by section 7702B(g) or 4980C (as described in this paragraph (b)(1)), but in which there has been a failure to comply with that State requirement.

(2) *Contracts issued in a State that has adopted the model provisions.* If a State imposes a requirement that is the same as the parallel requirement imposed by section 7702B(g) or 4980C, compliance with that requirement of State law is considered compliance with the parallel requirement of section 7702B(g) or 4980C, and failure to comply with that requirement of State law is considered failure to comply with the parallel requirement of section 7702B(g) or 4980C.

(3) *Contracts issued in a State that has not adopted the model provisions or more stringent requirements.* If a State has not adopted the Model Act, the Model Regulation, or a requirement that is the same as or more stringent than the analogous requirement imposed by section 7702B(g) or 4980C, then the language, caption, format, and content requirements imposed by sections 7702B(g) and 4980C with respect to contracts, applications, outlines of coverage, policy summaries, and notices will be considered satisfied for a contract subject to the law of that State if the language, caption, format, and content are substantially similar to those required under the parallel provision of the Model Act or Model Regulation. Only nonsubstantive deviations are permitted in order for language, caption, format, and content to be considered substantially similar to the requirements of the Model Act or Model Regulation.

§ 1.7702B–2 Special rules for pre-1997 long-term care insurance contracts.

(a) *Scope.* The definitions and special provisions of this section apply solely for purposes of determining whether an insurance contract (other than a qualified long-term care insurance contract described in section 7702B(b) and any regulations issued thereunder) is treated as a qualified long-term care insurance contract for purposes of the Internal Revenue Code.

(b) *Pre-1997 long-term care insurance contracts.*—(1) *In general.* A pre-1997 long-term care insurance contract is treated as a qualified long-term care insurance contract, regardless of whether the contract satisfies section 7702B(b) and any regulations issued thereunder.

(2) *Pre-1997 long-term care insurance contract defined.* A pre-1997 long-term care insurance contract is any insurance contract with an issue date before January 1, 1997, that met the long-term care insurance requirements of the State in which the contract was situsedon the issue date. For this purpose, the long-term care insurance requirements of the State are the State laws (including statutory and administrative law) that are intended to regulate insurance coverage that constitutes "long-term care insurance" (as defined in section 4 of the National Association of Insurance Commissioners (NAIC) Long-Term Care Insurance Model Act, as in effect on August 21, 1996), regardless of the terminology used by the State in describing the insurance coverage.

(3) *Issue date of a contract.* (i) *In general.* The issue date of a contract is the issue date assigned to the contract by the insurance company, but in no event is the issue date earlier than the date the policyholder submitted a signed application for coverage to the insurance company. However, if the period between the date the signed application is submitted to the insurance company and the date coverage under the contract actually becomes effective is substantially longer than under the insurance company's usual business practice, then the issue date is the date coverage under the contract becomes effective (if this is later than the issue date assigned to the contract by the insurance company). A policyholder's right to return a contract within a "free-look" period following delivery for a full refund of any premiums paid is not taken into account in determining the contract's issue date.

(ii) *Special rule for group contracts.* The issue date of a group contract (including any certificate issued thereunder) is the date on which coverage under the group contract becomes effective.

(iii) *Exchange of contract or material change in a contract treated as a new issuance.* For purposes of this paragraph (b)(3)—

(A) A contract issued in exchange for an existing contract after December 31, 1996, is considered a contract issued after that date;

(B) Any material change (as defined in paragraph (b)(4) of this section) in a contract is treated as the issuance of a new contract with an issue date no earlier than the date the material change goes into effect; and

(C) If a material change occurs with regard to one or more, but fewer than all, of the certificates evidencing coverage under a group contract, then the insurance coverage under the changed certificates is treated as coverage under a newly issued group contract (and the insurance coverage provided by any unchanged certificate continues to be treated as coverage under the original group contract).

(4) *Material change.* (i) *In general.* For purposes of paragraph (b)(3) of this section, except as provided in paragraph (b)(4)(ii) of this section, a material change means—

(A) A change in the terms of a contract that alters the amount or timing of an item payable by the policyholder (or certificate holder), the insured, or the insurance company;

(B) A substitution of the insured under an individual contract; or

(C) A change (other than an immaterial change) in the eligibility for membership in the group covered under a group contract.

(ii) *Exceptions.* For purposes of this paragraph (b)(4), the following changes are not treated as a material change:

(A) A policyholder's exercise of any right provided under the terms of the contract as in effect on December 31, 1996, or a right required by applicable State law to be provided to the policyholder;

(B) A change in the mode of premium payment (for example, a change from monthly to quarterly premiums);

(C) In the case of a policy that is guaranteed renewable or noncancellable, a classwide increase or decrease in premiums;

(D) A reduction in premiums due to the purchase of a long-term care insurance contract by a family member of the policyholder;

(E) A reduction in coverage (with a corresponding reduction in premiums) made at the request of a policyholder;

(F) The addition, without an increase in premiums, of alternative forms of benefits that may be selected by the policyholder;

(G) The addition of a rider (including any similarly identifiable amendment) to a pre-1997 long-term care insurance contract in any case in which the rider, if issued as a separate contract of insurance, would itself be a qualified long-term care insurance contract under section 7702B and any regulations issued thereunder (including the consumer protection provisions in section 7702B(g) to the extent applicable to the addition of a rider);

(H) The deletion of a rider or provision of a contract (often referred to as an HHS rider) that prohibited coordination of benefits with Medicare; and

(I) The effectuation of a continuation or conversion of coverage right provided under a group contract following an individual's ineligibility for continued coverage under the group contract.

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

Example 1. (i) On December 3, 1996, A, an individual, submits a signed application to an insurance company to purchase a nursing home contract that meets the long-term care insurance requirements of the State in which the contract is situsedt. The insurance company decides on December 20, 1996, that it will issue the contract, and assigns December 20, 1996, as the issue date for the contract. Under the terms of the contract, A's insurance coverage becomes effective on January 1, 1997. The company delivers the contract to A on January 3, 1997. A has the right to return the contract within 15 days following delivery for a refund of all premiums paid.

(ii) Under paragraph (b)(3)(i) of this section, the issue date of the contract is December 20, 1996. Thus, the contract is a pre-1997 long-term care insurance contract that is treated as a qualified long-term care insurance contract.

Example 2. (i) The facts are the same as in *Example 1*, except that the insurance coverage under the contract does not become effective until March 1, 1997. Under the insurance company's usual business practice, the period between the date of the application and the date the contract becomes effective is 30 days or less.

(ii) Under paragraph (b)(3)(i) of this section, the issue date of the contract is March 1, 1997. Thus, the contract is not a pre-1997 long-term care insurance contract, and, accordingly, the contract must meet the requirements of section 7702B(b) and any regulations issued thereunder to be a qualified long-term care insurance contract.

Example 3. (i) B, an individual, is the policyholder under a long-term care insurance contract purchased in 1995. On June 15, 2000, the insurance coverage and premiums under the contract are increased by agreement between B and the insurance company.

(ii) Under paragraph (b)(4)(i)(A) of this section, a change in the terms of a contract that alters the amount or timing of an item payable by the policyholder or the insurance company is a material change in the contract. Thus, B's coverage is treated as coverage under a contract issued on June 15, 2000, and, accordingly, the contract must meet the requirements of section 7702B(b) and any regulations issued thereunder in order to be a qualified long-term care insurance contract.

Example 4. (i) C, an individual, is the policyholder under a long-term care insurance contract purchased in 1994. At that time and through December 31, 1996, the contract met the long-term care insurance requirements of the State in which the contract was situsted. In 1996, the policy was amended to add a provision requiring the policyholder to be offered the right to increase dollar limits for inflation every three years (without the policyholder being required to pass a physical or satisfy any other underwriting requirements). During 2002, C elects to increase the amount of insurance coverage (with a resulting premium increase) pursuant to the inflation protection provision.

(ii) Under paragraph (b)(4)(ii)(A) of this section, an increase in the amount of insurance coverage at the election of the policyholder (without the insurance company's consent and without underwriting or other limitations on the policyholder's rights) pursuant to a pre-1997 inflation protection provision does not constitute a material change in the contract. Thus, C's contract continues to be a pre-1997 long-term care insurance contract that is treated as a qualified long-term care insurance contract.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 97–33986 Filed 12–31–97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–115795–97]

RIN 1545–AV39

General Rules for Making and Maintaining Qualified Electing Fund Elections

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 that provide guidance to a passive foreign investment company (PFIC) shareholder that makes the election under section 1295 (section 1295 election) to treat the PFIC as a qualified electing fund (QEF). The temporary regulations also provide guidance for shareholders that wish to make a section 1295 election that will apply on a retroactive basis (retroactive election). The temporary regulations also include a rule concerning the taxation under section 1291 of an exempt organization that is a shareholder of a PFIC that is not a pedigreed QEF. This rule was originally proposed in 1992. The text of the temporary regulations also serves as the text of these proposed regulations. In addition, this document proposes amendments to proposed regulation § 1.1296–4(e), concerning the treatment of interbank deposits as loans for purposes of the exception to passive income characterization of income derived in the active conduct of a banking business. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by April 2, 1998. Requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for April 16, 1998, must be received by March 26, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–115795–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–115795–97), 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 3313, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Gayle Novig, (202) 622–3840; concerning submissions and the hearing, Evangelista Lee, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by March 3, 1998. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in proposed regulation §§ 1.1295–1(f), 1.1295–1(g), 1.1295–3(c), and 1.1295–3(g). The information required in § 1.1295–1 (f) and (g) will notify the Internal Revenue Service that certain shareholders have made the section 1295 election, and will enable the Internal Revenue Service to determine if a shareholder is satisfying the election and annual reporting requirements and is reporting income as required under section 1293.

The information required in proposed regulation § 1.1295–3(c) will notify the IRS that certain shareholders of foreign corporations have filed a Protective Statement to preserve their ability to make a retroactive section 1295 election, and that those shareholders have extended the periods of limitations for their taxable years to which the Protective Statement will apply. The information will enable the IRS to verify that the shareholders filing the Protective Statement had the requisite reasonable belief at the time they filed the statement. The information required in proposed regulation § 1.1295–3(g) will notify the IRS that a shareholder has made the retroactive election and, in the case of a shareholder that filed a Protective Statement, that the shareholder's waiver of the periods of

limitations will terminate within three years of making the election. The information will enable the Service to verify that the requirements for making a retroactive election have been satisfied.

The collection of information and responses to these collections of information are mandatory. The likely respondents are individuals, businesses, and other for-profit organizations.

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 control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Estimated total annual reporting/recordkeeping burden: 623 hours.

The estimated annual burden per respondent varies from 15 minutes to three hours, depending on individual circumstances, with an estimated average of 29 minutes.

Estimated number of respondents: 1,290.

Estimated annual frequency of responses: Annually or one time only.

Background

Sections 1291, 1293, 1295, and 1297

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to sections 1291, 1293, 1295, and 1297. The temporary regulations contain rules concerning the taxation of exempt organizations under section 1291, elections under section 1295 to treat passive foreign investment companies as qualified electing funds (QEFs), the calculation of net capital gain for purposes of section 1293, and the inclusion of the pro rata shares of the earnings and profits of QEFs held through pass through entities. The temporary regulations amend § 1.1297–3T, permitting in certain cases the application of the rules of section 1291(d)(2)(B) to an election made under section 1297(b)(1).

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Section 1296

On April 28, 1995, proposed regulations were published providing guidance for the exceptions to passive income characterization of certain income derived by active foreign banks and foreign security dealers provided in section 1296 (b)(2)(A) and (b)(3), respectively. The proposed section 1296 regulations reflect comments received with respect to Notice 89–81, 1989–2 C.B. 399. That notice established tests for determining whether a foreign corporation qualified for the active foreign bank exception. The notice specifically stated that interbank deposits would not be treated as loans made in the ordinary course of a banking business.

After consideration of the comments received with respect to the Notice, the IRS and Treasury determined that interbank deposits were made and accepted in the ordinary course of a banking business, and therefore should be treated as such for purposes of section 1296(b)(2)(A). Accordingly, proposed regulation § 1.1296–4(d)(3) specifically includes interbank deposits with other deposits for purposes of determining whether the foreign corporation satisfies the deposit-taking requirements of § 1.1296–4(d). Also in response to comments, proposed regulation § 1.1296–4(e) is clarified to specifically provide that interbank deposits made with banks in the ordinary course of business constitute loans for purposes of § 1.1296–4. This clarification is favorable to taxpayers, and is proposed to be effective for taxable years beginning after December 31, 1994. It is also proposed that taxpayers may apply it to a taxable year beginning after December 31, 1986, provided it is consistently applied to that taxable year and all subsequent taxable years. The dates for applying proposed regulation § 1.1296–4(e) coincide with the dates for which § 1.1296–4 is proposed to be effective. See proposed regulation § 1.1296–4(k).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment 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. It has been determined that an initial regulatory flexibility analysis is required for the collection of information in this notice of proposed rulemaking under 5 U.S.C. § 603. This analysis is set forth below under the heading "Initial Regulatory Flexibility Analysis."

Initial Regulatory Flexibility Analysis

This initial analysis is provided pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The major objective of the proposed regulations is to provide guidance to PFIC shareholders that wish to elect under section 1295 to treat their PFICs as QEFs, and provide guidance to those PFICs about the requirements imposed on them. The legal basis for these requirements is contained in sections 1293, 1294, and 1295. The IRS and Treasury are not aware of any federal rules that duplicate, overlap, or conflict with the proposed regulations.

The recordkeeping and reporting requirements of the proposed regulations enable the Internal Revenue Service to identify those taxpayers that are treating their PFICs as QEFs; to verify that those U.S. taxpayers are currently including their shares of QEF earnings in income, as required in section 1293 of the Internal Revenue Code; to be informed of those QEF shareholders that are not paying their section 1293 tax liability because they made the section 1294 election to defer the time for payment; to identify those shareholders of foreign corporations that are preserving their right to make a retroactive section 1295 election; to identify those shareholders making retroactive elections and verify that they are satisfying the requirements of a retroactive election; and, in the case of shareholders that have filed Protective Statements, the dates by which the shareholders' extensions of periods of limitations will terminate.

These proposed regulations will affect those small entities that are PFICs, at least one shareholder of which makes the section 1295 election. The proposed regulations also will affect those small entities that are PFIC shareholders that make the section 1295 election. The IRS and Treasury believe that affected small entities generally will be small businesses, as local governments are not likely to invest in PFICs. Also, few, if any, affected small entities likely will be tax exempt organizations, because only a tax exempt entity that is taxable under subchapter F on dividends received from the PFIC generally would need to consider making the section 1295 election.

The collections of information in these proposed regulations would impact a small entity that is treated as a QEF principally by requiring the

entity to calculate annually its ordinary earnings and net capital gain according to federal income tax accounting principles, as required by section 1293, and report that information to its shareholders that are U.S. persons. With the enactment of section 1(h), the QEF also must calculate each type of long term capital gain that it derived and the applicable rates of tax for proper inclusion of the QEF's net capital gain by the QEF shareholders. Alternatively, the regulations permit the QEF to provide its shareholders with its books, records and other documents necessary for the shareholders to calculate the ordinary earnings and net capital gain amounts. This alternative will enable a small entity that is a QEF to avoid the burden of calculating its net capital gain by providing its shareholders with information with which the shareholders can make the calculations.

The economic impact of other collections of information contained in these proposed regulations would fall on a small entity that is a shareholder of a PFIC for which it has made the section 1295 election or that is a pass through entity to which an interest holder transferred stock subject to a section 1295 election. The economic impact would result primarily from the reporting and recordkeeping requirements pertaining to (1) the manner for making the section 1295 election and the annual election requirements; (2) the calculation by the shareholder (rather than the QEF) of the QEF's ordinary earnings and net capital gain according to federal income tax principles, and its pro rata shares thereof; (3) a request for consent to revoke a section 1295 election; (4) the preservation of the right to make a retroactive election under section 1295; (5) a request for consent to make a retroactive election; (6) making a retroactive election, including filing amended returns for the affected taxable years; and (7) providing interest holders with PFIC statements and other information received by an intermediary shareholder.

The proposed regulations reduce the burden under existing rules for making the section 1295 election for all taxpayers, including small businesses and other small entities. Unlike the current requirements provided in Notice 88–125, the proposed regulations only require electing shareholders to file Form 8621 to make the section 1295 election, thereby eliminating the shareholder election statement as well as the requirement to file a copy of the PFIC Annual Information Statement. The proposed regulations only require shareholders to retain the PFIC Annual Information Statement or the Annual Intermediary Statement received as well as a copy of their filings for each year to which the section 1295 election applies. In addition, the proposed regulations impose a lesser burden on small shareholders, typically individuals and small entities, to preserve their right to make a retroactive election and a lesser burden of making a retroactive election. A small entity that owns less than five percent of each class of stock of a foreign corporation and satisfies other requirements is not required to file a Protective Statement to preserve its right to make a retroactive election with respect to the foreign corporation. Similarly, a small entity potentially has fewer amended returns to file to make a retroactive election than a shareholder that filed a Protective Statement. These changes in election requirements are illustrative of IRS efforts to minimize burden, particularly with respect to small entities.

An estimate of the number of small entities that would be affected by these regulations is unavailable. In any event, the enactment in 1997 of the mark-to-market election for PFIC shareholders and the elimination of the overlap in certain cases of subpart F and the PFIC provisions, will reduce the number of small entities that would be affected by these regulations.

None of the significant alternatives considered in drafting these regulations would have significantly altered the economic impact of the collections of information on small entities. In considering the significant alternatives that would be permissible under the Code and would enable the IRS to ensure compliance with the Code, the IRS and Treasury concluded that the alternatives generally would impose equal or greater burdens.

Comments and 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. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 16, 1998, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by April 2, 1998, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 26, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of the proposed regulations are Gayle Novig and Judith Cavell Cohen, of the Office of the Associate Chief Counsel (International). Other personnel from the IRS and Treasury Department also participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended 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 1.1291–1 is added to read as follows:

[The text of this proposed section is the same as the text of § 1.1291–1T published elsewhere in this issue of the **Federal Register**.]

Par. 3. Section 1.1293–1 is added to read as follows:

§ 1.1293–1 Current taxation of income from qualified electing funds.

[The text of this proposed section is the same as the text of § 1.1293–1T published elsewhere in this issue of the **Federal Register**.]

Par. 4. Section 1.1295–1 is added to read as follows:

§ 1.1295–1 Qualified electing funds.

[The text of this proposed section is the same as the text of § 1.1295–1T published elsewhere in this issue of the **Federal Register**.]

Par. 5. Section 1.1295–3 is added to read as follows:

§ 1.1295–3 Retroactive elections.

[The text of this proposed section is the same as the text of § 1.1295–3T published elsewhere in this issue of the **Federal Register**.]

Par. 6. In § 1.1297–3, paragraph (c) is added to read as follows:

§ 1.1297–3 Deemed sale election by a United States person that is a shareholder of a passive foreign investment company.

[The text of this proposed paragraph (c) is the same as the text of § 1.1297–3T(c) published elsewhere in this issue of the Federal Register.]

Par. 7 Section 1.1296–4(e) as proposed at 60 FR 20922 (April 28, 1995) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 1.1296–4 Characterization of certain banking income of foreign banks as passive.

* * * * *

(e) *Lending activities test.* * * * An interbank deposit made in the ordinary course of a corporation's banking business will be treated as a loan for purposes of this section. For the effective date of this paragraph (e), see paragraph (k) of this section.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 97–33984 Filed 12–31–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209476–82]

RIN 1545–AE41

Loans to Plan Participants

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document amends proposed Income Tax Regulations under section 72(p) of the Internal Revenue Code relating to loans made from a qualified employer plan to plan participants or beneficiaries. Section 72(p) was added by section 236 of the Tax Equity and Fiscal Responsibility Act of 1982, and amended by the Technical Corrections Act of 1982, the Deficit Reduction Act of 1984, the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. These regulations provide guidance to the public with respect to section 72(p), and affect administrators of, participants in, and beneficiaries of qualified employer plans that permit participants or beneficiaries to receive loans from the plan (including loans from section 403(b) contracts and other contracts issued under qualified employer plans).

DATES: Written comments and requests for a public hearing must be received by April 2, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209476–82), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209476–82), 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 Vernon S. Carter, (202) 622–6070; concerning submissions or requests to speak at the hearing, La Nita VanDyke, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Proposed Income Tax Regulations (26 CFR Part 1) under section 72 of the Internal Revenue Code of 1986 (Code). These amendments provide additional guidance concerning the tax treatment of loans that are deemed to be distributed under section 72(p).

Explanation of Provisions

Section 72(p)(1)(A) provides that a loan from a qualified employer plan (including a contract purchased under a qualified employer plan) to a participant or beneficiary is treated as received as a distribution from the plan for purposes of section 72 (a deemed distribution). Section 72(p)(1)(B) provides that an assignment or pledge of (or an agreement to assign or pledge) any portion of a participant's or beneficiary's interest in a qualified employer plan is treated as a loan from the plan.

Section 72(p)(2) provides that section 72(p)(1) does not apply to the extent certain conditions are satisfied. Specifically, under section 72(p)(2), a loan from a qualified employer plan to a participant or beneficiary is not treated as a distribution from the plan if the loan satisfies requirements relating to the term of the loan and the repayment schedule, and to the extent the loan satisfies certain limitations on the amount loaned.

Regulations were proposed in 1995 [1] with respect to many of the issues arising under section 72(p)(2). The preamble to the 1995 proposed regulations requested comments on whether further guidance should be provided on certain issues that were not addressed. Following publication of the 1995 proposed regulations, comments were received and a public hearing was held on June 28, 1996. One of the issues on which comments were requested and received was the effect of a deemed distribution on the tax treatment of subsequent distributions from a plan (such as whether a participant has tax basis as a result of a deemed distribution). After reviewing the written comments and comments made at the public hearing, these new proposed regulations address this issue.

These new proposed regulations provide that once a loan is deemed distributed under section 72(p), the interest that accrues thereafter on that loan is not included in income.[2] Further, because the loan amount is treated as distributed for purposes of section 72, neither the income that resulted from the deemed distribution nor the interest that accrues thereafter increases the participant's investment in the contract (tax basis) for purposes of section 72.

For example, assume that, after a loan has been made from a defined contribution plan to a participant, a deemed distribution occurs as a result of failure to make timely loan repayments (e.g., the repayments were not to be made by payroll withholding [3]). The participant's total account then consists of non-loan assets and a receivable for the loan balance. At separation from employment, the participant's vested

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[1] Proposed § 1.72(p)–1 (EE–106–82) was published in the **Federal Register** (60 FR 66233) on December 21, 1995.

[2] This treatment applies for purposes of determining the amount taxable under section 72 (including application of return of tax basis). However, as discussed below, the loan is still considered outstanding for purposes of determining the maximum amount of any subsequent loan to the participant under section 72(p)(2)(A). Even though interest continues to accrue on the outstanding loan and is taken into account for purposes of determining the maximum amount of any subsequent loan, this additional interest is not treated as an additional loan that results in a further deemed distribution for purposes of section 72(p).

[3] With respect to coverage under Title I of the Employee Retirement Income Security Act of 1974, the Department of Labor has advised the Service that an employer's tax-sheltered annuity program would not necessarily fail to satisfy the Department's regulation at 29 CFR 2510.3–2(f) merely because the employer permits employees to make repayments of loans made in connection with the tax-sheltered annuity program through payroll deductions as part of the employer's payroll deduction system, if the program operates within the limitations set by that regulation.

account balance is reduced (offset) by the loan amount and the remaining account balance is distributed in a lump sum to the participant. In this case, in addition to the income that previously arose as a result of the deemed distribution due to the failure to make timely payments on the loan, the participant would have a taxable distribution at separation from employment for the remaining account balance reflecting the non-loan assets that are distributed in a lump sum (with no tax basis as a result of the prior deemed distribution of the loan amount). The offset of the loan balance (i.e., the offset of the loan receivable by the loan amount) would be disregarded for purposes of section 72 because the loan had previously been deemed distributed as a result of the failure to make timely payments on the loan.

A loan that is deemed distributed under section 72 is nevertheless outstanding for other purposes until the loan obligation is satisfied (e.g., by cash repayment or by offset against the participant's accrued benefit). Q&A–13 of the 1995 proposed regulations lists other differences between a deemed distribution and a loan offset. In addition, for purposes of calculating the maximum permitted amount of any subsequent loan, a loan that has been deemed distributed is considered outstanding until the loan obligation has been satisfied.

The proposed regulations also provide that if a participant makes any cash repayments on a loan after the loan is deemed distributed, the repayments increase the participant's tax basis in the plan in the same manner as if the repayments were after-tax contributions. However, such repayments are not treated as after-tax contributions for purposes of section 401(m) or 415(c)(2)(B).

These regulations are proposed to become effective for loans made on or after the first January 1 that is at least 6 months after the date the regulations are published as final regulations in the **Federal Register** (the regulatory effective date). These regulations also revise the proposed effective date for the 1995 proposed regulations, so that the same proposed effective date would apply to the 1995 proposed regulations and these proposed regulations.

Generally, a plan is permitted to apply the new proposed regulations to loans made before the regulatory effective date. However, the regulations include a special consistency rule applicable if there has been any deemed distribution of the loan before the date the plan switches to the new proposed regulations for the loan. In this event, a plan is not permitted to apply the new proposed regulations to the loan unless the plan reported, in Box 1 of Form 1099–R, a gross distribution with respect to the loan that is at least equal to the amount required by the 1995 proposed regulations (referred to as the initial default amount in the new proposed regulations) for a taxable year that is not later than the latest year that would be permitted under the 1995 proposed regulations. In such a case, the plan may apply the new proposed regulations to the loan even though, in the past, the plan reported deemed distributions with respect to the loan in a manner that is not consistent with the new proposed regulations.

If a plan does apply the new proposed regulations to a pre-regulatory effective date loan that has been deemed distributed, then the plan, in its subsequent reporting and withholding, must not attribute investment in the contract (tax basis) to the participant based upon the initial default amount. For example, a plan that reported income for the initial default amount plus all interest accruing thereafter as a result of the default and made corresponding increases in the participant's tax basis would comply with this consistency rule by reducing the participant's tax basis by an amount equal to the initial default amount. However, a special rule applies if a plan had increased a participant's tax basis by the initial default amount and, just before the first actual distribution made after the plan switches to applying the new proposed regulations to the loan, the sum of the participant's tax basis immediately before the switch plus any increase in basis thereafter is less than the initial default amount (as a result of intervening distributions). In this case, a loan transition amount equal to the amount by which the initial default amount exceeds the participant's tax basis is treated as remaining outstanding and that amount is includible in the participant's income at the time of the next actual distribution from the plan to the participant. The proposed regulations include examples illustrating the application of the consistency rule.

Comments are requested on whether the final regulations should include further guidance relating to plan loans made to participants before the regulatory effective date.

Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect.

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 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, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferable a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying. A public hearing will 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 author of these regulations is Vernon S. Carter, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Previously Proposed Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 126 U.S.C. 7805. * * *

Par. 2. Section 1.72(p)–1 of the proposed regulations published December 21, 1995, (60 FR 66233) is amended as follows:

1. Q&A–19 is redesignated as Q&A–21.

2. New Q&A–19 and Q&A–20 are added.

3. Q&A–21, as redesignated, is revised.

The additions and revision read as follows:

§ 1.72(p)-1 Loans treated as distributions.

* * * * *

Q–19: If there is a deemed distribution under section 72(p), is the interest that accrues thereafter on the amount of the deemed distribution an indirect loan for income tax purposes?

A–19: (a) *General rule.* Except as provided in paragraph (b) of this Q&A–19, a deemed distribution of a loan is treated as a distribution for purposes of section 72. Therefore, a loan that is deemed to be distributed under section 72(p) ceases to be an outstanding loan for purposes of section 72, and the interest that accrues thereafter under the plan on the amount deemed distributed is disregarded in applying section 72 to the participant or beneficiary. Even though interest continues to accrue on the outstanding loan (and is taken into account for purposes of determining the tax treatment of any subsequent loan in accordance with paragraph (b) of this Q&A–19), this additional interest is not treated as an additional loan (and, thus, does not result in an additional deemed distribution) for purposes of section 72(p). However, a loan that is deemed distributed under section 72(p) is not considered distributed for all purposes of the Internal Revenue Code. See Q&A–11 through Q&A–16 of this section.

(b) *Exception for purposes of applying section 72(p)(2)(A) to a subsequent loan.* A loan that is deemed distributed under section 72(p) (including interest accruing thereafter) and that has not been repaid (such as by a plan loan offset) is considered outstanding for purposes of applying section 72(p)(2)(A) to determine the maximum amount of any subsequent loan to the participant or beneficiary.

Q–20: Is a participant's tax basis in the plan increased if the participant repays the loan after a deemed distribution?

A–20: (a) *Repayments after deemed distribution.* Yes, if the participant or beneficiary repays the loan after a deemed distribution of the loan under section 72(p), then, for purposes of section 72(e), the participant's or beneficiary's investment in the contract (tax basis) under the plan increases by the amount of the cash repayments that the participant or beneficiary makes on the loan after the deemed distribution. However, loan repayments are not treated as after-tax contributions for other purposes, including sections 401(m) and 415(c)(2)(B).

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q&A–20 and is based on the assumptions described in ASSUMPTIONS FOR EXAMPLES:

Example. (a) A participant receives a $20,000 loan on January 1, 1999, to be repaid in 20 quarterly installments of $1,245 each. On December 31, 1999, the outstanding loan balance ($19,179) is deemed distributed as a result of a failure to make quarterly installment payments that were due on September 30, 1999 and December 31, 1999. On June 30, 2000, the participant repays $5,147 (which is the sum of the three installment payments that were due on September 30, 1999, December 31, 1999, and March 31, 2000, with interest thereon to June 30, 2000, plus the installment payment that was due on June 30, 2000). Thereafter, the participant resumes making the installment payments of $1,245 from September 30, 2000 through December 31, 2003. The loan repayments made after December 31, 1999 through December 31, 2003 total $22,577.

(b) Because the participant repaid $22,577 after the deemed distribution that occurred on December 31, 1999, the participant has investment in the contract (tax basis) equal to $22,577 as of December 31, 2003.

Q–21: When is the effective date of section 72(p) and these regulations?

A–21: (a) *Statutory effective date.* Section 72(p) generally applies to assignments, pledges, and loans made after August 13, 1982.

(b) *Regulatory effective date.* This section applies to assignments, pledges, and loans made on or after the first January 1 that is at least 6 months after the date of publication of the final regulations in the Federal Register (the regulatory effective date).

(c) *Loans made before the regulatory effective date*—(1) *General rule.* A plan is permitted to apply Q&A–19 and Q&A–20 of this section to a loan made before the regulatory effective date (and after the statutory effective date in paragraph (a) of this Q&A–21) if there has not been any deemed distribution of the loan before the transaction date or if the conditions of paragraph (c)(2) of this Q&A–21 are satisfied with respect to the loan.

(2) *Consistency transition rule for certain loans deemed distributed before the regulatory effective date.* (i) The rules in this paragraph (c)(2) apply to a loan made before the regulatory effective date (and after the statutory effective date in paragraph (a) of this Q&A–21) if there has been any deemed distribution of the loan before the transition date.

(ii) The plan is permitted to apply Q&A–19 and Q&A–20 of this section to the loan beginning on any January 1, but only if the plan reported, in Box 1 of Form 1099–R, for a taxable year no later than the latest taxable year that would be permitted under this section, a gross distribution of an amount at least equal to the initial default amount. For purposes of this section, the initial default amount is the amount that would be reported as a gross distribution under Q&A–4 and Q&A–10 of this section and the transition date is the January 1 on which a plan begins applying Q&A–19 and Q&A–20 of this section to a loan.

(iii) If a plan applies Q&A–19 and Q&A–20 of this section to such a loan, then the plan, in its reporting and withholding on or after the transition date, must not attribute investment in the contract (tax basis) to the participant or beneficiary based upon the initial default amount.

(iv) This paragraph (c)(2)(iv) applies if—

(A) The plan attributed investment in the contract (tax basis) to the participant or beneficiary based on the deemed distribution of the loan;

(B) The plan subsequently made an actual distribution to the participant or beneficiary before the transition date; and

(C) Immediately before the first actual distribution made on or after the transition date, the initial default amount (or, if less, the amount of the investment in the contract so attributed) exceeds the sum of the participant's or beneficiary's investment in the contract (tax basis) immediately before the transition date plus any increase in the participant's or beneficiary's investment in the contract (tax basis) on or after the transition date. If this paragraph (c)(2)(iv) applies, the plan must treat the excess (the loan transition amount) as a loan amount that remains outstanding and must include the excess in the participant's or beneficiary's income at the time of the actual distribution.

(3) *Examples.* The rules in paragraph (c)(2) of this Q&A–21 are illustrated by the following examples, which are based on the assumptions described in ASSUMPTIONS FOR EXAMPLES (and, except as specifically provided in the examples, also assume that no distributions are made to the participant and that the participant has no investment in the contract with respect to the plan). *Example 1, Example 2,* and *Example 4* illustrate the application of these rules to a plan that, before the transition date, did not treat interest accruing after the initial deemed distribution as resulting in additional deemed distributions under section 72(p). *Example 3* illustrates the

application of these rules to a plan that, before the transition date, treated interest accruing after the initial deemed distribution as resulting in additional deemed distributions under section 72(p).

Example 1. (a) In 1995, when a participant's account balance under a plan is $50,000, the participant receives a loan from the plan. The participant makes the required repayments until 1996 when there is a deemed distribution of $20,000 as a result of a failure to repay the loan. For 1996, as a result of the deemed distribution, the plan reports, in Box 1 of Form 1099–R, a gross distribution of $20,000 (which is the initial default amount in accordance with paragraph (c)(2)(ii) of Q&A–21 of this section) and, in Box 2 of Form 1099–R, a taxable amount of $20,000. The plan then records an increase in the participant's tax basis for the same amount ($20,000). Thereafter, the plan disregards, for purposes of section 72, the interest that accrues on the loan after the 1996 deemed distribution. Thus, as of December 31, 1998, the total taxable amount reported by the plan as a result of the deemed distribution is $20,000 and the plan's records show that the participant's tax basis is the same amount ($20,000). As of January 1, 1999, the plan decides to apply Q&A–19 of this section to the loan. Accordingly, it reduces the participant's tax basis by the initial default amount of $20,000, so that the participant's remaining tax basis in the plan is zero. Thereafter, the amount of the outstanding loan is not treated as part of the account balance for purposes of section 72. The participant attains age 59–½ in the year 2000 and receives a distribution of the full account balance under the plan consisting of $60,000 in cash and the loan receivable. At that time, the plan's records reflect an offset of the loan amount against the loan receivable in the participant's account and a distribution of $60,000 in cash.

(b) For the year 2000, the plan must report a gross distribution of $60,000 on Box 1 of Form 1099–R and a taxable amount of $60,000 in Box 2 of Form 1099–R.

Example 2. The facts are the same as in *Example 1*, except that in 1996, immediately prior to the deemed distribution, the participant's account balance under the plan totals $50,000 and the participant's tax basis is $10,000. For 1996, the plan reports, in Box 1 of Form 1099–R, a gross distribution of $20,000 (which is the initial default amount in accordance with paragraph (c)(2)(ii) of Q&A–21 of this section) and reports, in Box 2 of Form 1099–R, a taxable amount of $16,000 (the $20,000 deemed distribution minus $4,000 of tax basis ($10,000 times ($20,000/$50,000)) allocated to the deemed distribution). The plan then records an increase in tax basis equal to the $20,000 deemed distribution, so that the participant's remaining tax basis as of December 31, 1996 totals $26,000 ($10,000 minus $4,000 plus $20,000). Thereafter, the plan disregards, for purposes of section 72, the interest that accrues on the loan after the 1996 deemed distribution. Thus, as of December 31, 1998, the total taxable amount reported by the plan as a result of the deemed distribution is $16,000 and the plan's records show that the participant's tax basis is $26,000. As of January 1, 1999, the plan decides to apply Q&A–19 of this section to the loan. Accordingly, it reduces the participant's tax basis by the initial default amount of $20,000, so that the participant's remaining tax basis in the plan is $6,000. Thereafter, the amount of the outstanding loan is not treated as part of the account balance for purposes of section 72. The participant attains age 59½ in the year 2000 and receives a distribution of the full account balance under the plan consisting of $60,000 in cash and the loan receivable. At that time, the plan's records reflect an offset of the loan amount against the loan receivable in the participant's account and a distribution of $60,000 in cash.

(b) For the year 2000, the plan must report a gross distribution of $60,000 on Box 1 of Form 1099–R and a taxable amount of $54,000 in Box 2 of Form 1099–R.

Example 3. (a) In 1990, when a participant's account balance in a plan is $100,000, the participant receives a loan of $50,000 from the plan. The participant makes the required loan repayments until 1992 when there is a deemed distribution of $28,919 as a result of a failure to repay the loan. For 1992, as a result of the deemed distribution, the plan reports, in Box 1 of Form 1099–R, a gross distribution of $28,919 (which is the initial default amount in accordance with paragraph (c)(2)(ii) of Q&A–21 of this section) and, in Box 2 of Form 1099–R, a taxable amount of $28,919. For 1992, the plan also records an increase in the participant's tax basis for the same amount ($28,919). Each year thereafter through 1998, the plan reports a gross distribution equal to the interest accruing that year on the loan balance, reports a taxable amount equal to the interest accruing that year on the loan balance reduced by the participant's tax basis allocated to the gross distribution, and records a net increase in the participant's tax basis equal to that taxable amount. As of December 31, 1998, the taxable amount reported by the plan as a result of the loan totals $44,329 and the plan's records for purposes of section 72 show that the participant's tax basis totals the same amount ($44,329). As of January 1, 1999, the plan decides to apply Q&A–19 of this section. Accordingly, it reduces the participant's tax basis by the initial default amount of $28,919, so that the participant's remaining tax basis in the plan is $15,410 ($44,329 minus $28,919) as of December 31, 1999. Thereafter, the amount of the outstanding loan is not treated as part of the account balance for purposes of section 72. The participant attains age 59½ in the year 2000 and receives a distribution of the full account balance under the plan consisting of $180,000 in cash and the loan receivable equal to the $28,919 outstanding loan amount in 1992 plus interest accrued thereafter to the payment date in 2000. At that time, the plan's records reflect an offset of the loan amount against the loan receivable in the participant's account and a distribution of $180,000 in cash.

(b) For the year 2000, the plan must report a gross distribution of $180,000 in Box 1 of Form 1099–R and a taxable amount of $164,590 in Box 2 of Form 1099–R ($180,000 minus the remaining tax basis of $15,410).

Example 4. (a) The facts are the same as in *Example 1*, except that in 1997, after the deemed distribution, the participant receives a $10,000 hardship distribution. At the time of the hardship distribution, the participant's account balance under the plan totals $50,000. For 1997, the plan reports, in Box 1 of Form 1099–R, a gross distribution of $10,000 and, in Box 2 of Form 1099–R, a taxable amount of $6,000 (the $10,000 actual distribution minus $4,000 of tax basis ($10,000 times ($20,000/$50,000)) allocated to this actual distribution). The plan then records a decrease in tax basis equal to $4,000, so that the participant's remaining tax basis as of December 31, 1997 totals $16,000 ($20,000 minus $4,000). After 1996, the plan disregards, for purposes of section 72, the interest that accrues on the loan after the 1996 deemed distribution. Thus, as of December 31, 1998, the total taxable amount reported by the plan as a result of the deemed distribution plus the 1997 actual distribution is $26,000 and the plan's records show that the participant's tax basis is $16,000. As of January 1, 1999, the plan decides to apply Q&A–19 of this section to the loan. Accordingly, it reduces the participant's tax basis by the initial default amount of $20,000, so that the participant's remaining tax basis in the plan is reduced from $16,000 to zero. However, because the $20,000 initial default amount exceeds $16,000, the plan records a loan transition amount of $4,000 ($20,000 minus $16,000). Thereafter, the amount of the outstanding loan, other than the $4,000 loan transition amount, is not treated as part of the account balance for purposes of section 72. The participant attains age 59½ in the year 2000 and receives a distribution of the full account balance under the plan consisting of $60,000 in cash and the loan receivable. At that time, the plan's records reflect an offset of the loan amount against the loan receivable in the participant's account and a distribution of $60,000 in cash.

(b) In accordance with paragraph (c)(2)(iv) of Q&A–21 of this section, the plan must report in Box 1 of Form 1099–R a gross distribution of $64,000 and in Box 2 of Form 1099–R a taxable amount for the participant for the year 2000 equal to $64,000 (the sum of the $60,000 paid in the year 2000 plus $4,000 as the loan transition amount).

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 97–33983 Filed 12–31–97; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–97–3278]

RIN 2127–AF74

Federal Motor Vehicle Safety Standards; Reflecting Surfaces

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petitions for reconsideration.

SUMMARY: This document denies two petitions for reconsideration of NHTSA's March 1996 final rule rescinding the Federal Motor Vehicle Safety Standard on reflecting surfaces. Neither petitioner has raised any new issues nor presented any new evidence that were not considered in the final rule.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

For technical issues: Mr. Richard Van Iderstine, Office of Crash Avoidance. Mr. Van Iderstine's telephone number is (202) 366–5280, and his FAX number is (202) 366–4329.

For legal issues: Ms. Dorothy Nakama, Office of the Chief Counsel. Ms. Nakama's telephone number is (202) 366–2992, and her FAX number is (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Background

Standard No. 107 was promulgated as one of the initial Federal Motor Vehicle Safety Standards (32 FR 2408, February 3, 1967). The standard specified reflecting surface requirements for certain "bright metal" components in the driver's forward field of view: the windshield wiper arms and blades, inside windshield mouldings, horn ring and hub of the steering wheel assembly, and the inside rearview mirror frame and mounting bracket. The specular gloss of the surface of these components was required to be less than 40 units when tested. ("Specular gloss" refers to the amount of light reflected from a test specimen.)

II. Rescission of Standard No. 107

A. Notice of Proposed Rulemaking

In a notice of proposed rulemaking published on June 26, 1995 (60 FR 32935), NHTSA proposed to rescind Standard No. 107, on the grounds that market forces and product liability concerns have eliminated the need for its requirements. NHTSA rejected the possibility of extending the standard's specular gloss limitations to non-metallic surfaces, and to the instrument panel.

In the NPRM, NHTSA stated its belief that market forces continue to favor matte finishes and surfaces for components in the driver's field of view, and are reinforced by product liability concerns. As evidence of the impact of these factors, NHTSA cited the virtual disappearance of horn rings and metallic windshield mountings and the use of matte finishes on unregulated components. The agency also noted that nonmetallic materials are typically lighter weight than metallic ones.

NHTSA concluded that as a result of the use of nonmetallic components in the driver's field of view, glare from those components has been substantially reduced. Increased use of non-metallic materials (hard plastic or rubber) for parts such as windshield wiper arms and blades, steering wheel assembly hubs, and inside rearview mirror frame and mounting brackets, has virtually eliminated the metallic components that are regulated by the standard.

The decreasing tendency to use metal is also evident with respect to components not regulated by Standard No. 107. Since 1987, vehicle interior styling practices have favored a combination of hard plastic and other materials that do not reflect sufficient light to create glare. NHTSA stated its belief that market forces will continue to favor these materials in the future.

In the NPRM, NHTSA tentatively concluded that although it believed future market forces would favor nonreflecting surfaces, it was possible that motor vehicle designs, styles, and preferred materials would change. If such changes should result in motor vehicle components that may produce distracting glare in the driver's line of sight, NHTSA stated that it "intends to review the situation" through its statutory authority over safety related defects. 60 FR 32936.

B. Comments

Seven comments were received in response to the NPRM. All commenters supported the proposed rescission, except for the Advocates for Highway and Auto Safety (Advocates), and the State of Connecticut (Connecticut). The Insurance Institute for Highway Safety (IIHS) supported rescission but objected to NHTSA's reliance on product liability considerations and recall procedures as rationales for rescission.

C. Final Rule and Petitions for Reconsideration

On March 21, 1996, NHTSA issued a final rule rescinding Standard No. 107 (61 FR 11587). NHTSA concluded that Standard No. 107 could be rescinded without adversely affecting safety. This conclusion was based on the agency's finding that vehicle manufacturers had established a practice of using nonglossy materials and matte finishes on unregulated components as well as the components regulated by Standard No. 107. Since manufacturers have elected to use nonglossy surfaces on components not regulated by the standards, NHTSA concluded that rescinding Standard No. 107 would not result in the return of the glossy surfaces that prompted the agency to issue the standards. In reaching this conclusion, NHTSA also noted that the virtual elimination of metallic components within the driver's forward field of view had already reduced the effective scope of the standard "to the level of insignificance." 61 FR 11587.

Subsequent to issuance of the final rule, petitions for reconsideration were submitted by the Center for Auto Safety (CAS) and Dr. Merrill Allen, neither of whom had commented on the NPRM. CAS asserted that NHTSA's rescission of Standard No. 107 "cannot stand" for the following four reasons:

(1) NHTSA provided no satisfactory basis and explanation for "reversing course" and rescinding a safety standard.

(2) NHTSA relied on factors Congress did not intend NHTSA to consider, which are not adequate substitutes for continued enforcement of Standard No. 107. In particular, NHTSA's reliance on "market forces" is "implausible and run[s] counter to the evidence in the rulemaking record."

(3) There are "identified market segments" which are eager to supply an apparent demand for bright metal interior components. Rescinding Standard No. 107 would encourage this demand.

(4) NHTSA's final rule ignores information in the record reflecting the need to extend the Standard to reduce glare from currently unregulated sources and is therefore "arbitrary, capricious, and an abuse of discretion."

In making its first two arguments, CAS relied on the legal standard for rescinding a Federal Motor Vehicle Safety Standard established in the 1983 U.S. Supreme Court decision *Motor Vehicle Manufacturers Association* v. *State Farm Mutual Automobile Insurance Co., Inc.* (463 U.S. 29) (hereafter cited as *State Farm*). NHTSA

will address each of CAS' assertions below.

III. Review of CAS' Petition

1. Legal Standard for Review Established by the Supreme Court

In its petition for reconsideration, CAS stated its view of the legal principles established in *State Farm*. In essence, CAS argues that NHTSA's rescission of Standard No. 107 was "arbitrary and capricious" and did not meet *State Farm's* principles for rescinding a Federal motor vehicle safety standard (FMVSS). In *State Farm*, the Supreme Court cited *Citizens to Preserve Overton Park* v. *Volpe* (401 U.S. 402, 414 (1971)) to the effect that an agency's actions in promulgating motor vehicle safety standards may be set aside if found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." (463 U.S. at 41)

The Supreme Court noted that revoking a standard constitutes a reversal of the agency's former views as to the proper course: "There is, then, at least a presumption that those policies will be carried out best if the settled rule is adhered to." (463 U.S. at 42) Therefore, an agency changing its course by rescinding a rule must supply "a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance." (463 U.S. at 42)

At the same time, the Supreme Court recognized that "regulatory agencies do not establish rules of conduct to last forever" (citing *American Trucking Assns., Inc.* v. *Atchison, T. & S.F.R. Co.* (387 U.S. 397, 416 (1967)) and that an agency must be given latitude to "adapt their rules and policies to the demands of changing circumstances" (citing *Permian Basin Area Rate Cases*, 390 U.S. 747, 784 (1968)). (463 U.S. at 42) The Supreme Court further stated that the presumption from which judicial review should start is against changes in current policy that are not justified by the rulemaking record. (See 463 U.S. at 42)

A. NHTSA Has Not "Reversed Course" in Rescinding Standard No. 107

The CAS's first assertion under *State Farm* is that in rescinding Standard No. 107, it has "revers[ed] course" without a satisfactory basis and explanation. NHTSA, however, looks at the rescission of the Standard as the logical end result of the rulemaking history of Standard No. 107.

The Supreme Court described the rulemaking record of the Standard at issue in *State Farm* as follows: "Over the course of approximately 60 rulemaking notices, the requirement has been imposed, amended, rescinded, reimposed, and now rescinded again." (463 U.S. at 34) CAS tries to analogize the facts in the rescission of Standard No. 107 to the facts in *State Farm*, and argues that the fact of rescinding Standard No. 107 (i.e., a Standard that had been in effect for thirty years) makes NHTSA's actions "arbitrary and capricious."

In contrast to the facts in *State Farm*, the history of Standard No. 107 shows no pattern of frequent changes. Despite opportunities to do so, NHTSA has never determined that expanding Standard No. 107 would meet the need for safety. The rescinded Standard No. 107 was the same Standard promulgated in 1967.

In an NPRM dated November 13, 1987 (52 FR 43628), NHTSA considered whether to extend Standard No. 107's specular gloss limitations to non-metallic surfaces. NHTSA considered three issues: (1) Whether there are safety benefits in retaining Standard No. 107; (2) whether there is justification to apply the specular gloss requirement to non-metallic versions of the components already covered by Standard No. 107; and (3) whether there is a need to expand Standard No. 107 to other component parts (such as instrument panel pads).

On the first issue, NHTSA concluded the Standard No. 107's limits on highly reflective components, (i.e., possible sources of glare), still addressed a safety problem for drivers. On the second issue, NHTSA proposed to extend the standard to non-metallic components, tentatively determining that the problem posed by glossy non-metallic components was indistinguishable from the problem posed by glossy metallic components. On the third issue, NHTSA declined to propose extending Standard No. 107 to other vehicle components, since it found no data showing that glare from unregulated components has presented a safety problem.

In 1989, NHTSA terminated the rulemaking after finding no evidence to substantiate a safety problem with glare from non-metallic surfaces. (54 FR 35011, August 23, 1989).

In 1991, the CAS petitioned NHTSA to add the instrument panel surface as a newly regulated item in Standard No. 107. CAS believed that such an action would "significantly limit dashboard reflections in windshields", and limit "veiling glare" as a "major source of vision impairment." NHTSA denied CAS's petition (see 56 FR 40853, August 16, 1991), after determining that there was no evidence of a visibility problem that warranted rulemaking.

The agency could find no information showing that dashboard reflections constituted a safety hazard. At the time (i.e., in 1991), a search of the NHTSA consumer complaint file found only 23 complaints that were related to light refections from the dashboard in over 138,000 complaints (0.017 percent). NHTSA determined that the insignificant number of complaints reinforced the agency's prior determinations that there is no need to expand the scope of Standard No. 107. Therefore, NHTSA found no safety need to add to the components covered by Standard No. 107.

B. NHTSA relied on Appropriate Factors, including Market Forces, in Rescinding Standard No. 107

In its second argument under *State Farm*, CAS asserted that NHTSA relied on factors that Congress did not intend it to consider, which are not adequate substitutes for continued enforcement of Standard No. 107. In particular, CAS pointed to the President's Regulatory Reinvention Initiative as a factor Congress did not intend NHTSA to consider, and described NHTSA's reliance on "market forces" as "implausible" and "counter to the evidence in the rulemaking record."

In *State Farm*, the Supreme Court cited the *Permian Basin Area Rate Cases* (390 U.S. 747, 416 (1967)) for the principle that an agency must be given latitude to "adapt their rules and policies to the demands of changing circumstances." (463 U.S. at 42). NHTSA did not decide to rescind Standard No. 107 precipitously. It decided to rescind the Standard after observing long-term changes in the composition of components in vehicle interiors (whether or not the component was regulated by Standard No. 107). It used its knowledge of the motor vehicle industry to determine that cost of materials (a "market force") is an important consideration for vehicle manufacturers, and would continue to be so. NHTSA also noted that since rubber and plastics tend to cost and weigh less than metals, vehicle manufacturers would likely continue to use less expensive materials in the components specified in Standard No. 107.

Although CAS cites the President's Regulatory Reinvention Initiative (RRI) as a factor that Congress did not intend NHTSA to consider, the RRI only provided NHTSA an opportunity to revisit an important issue first raised in the 1987 NPRM: does Standard No. 107 continue to address a safety problem for

drivers? NHTSA determined that the answer was now no.

An updated search conducted in 1995 of NHTSA's consumer complaint file found 52 complaints that were related to dashboard glare in over 241,000 complaints (0.021 percent). The 0.021 rate is about the same as the 1991 complaint rate of 0.017 percent. This updated search indicated the number of complaints related to dashboard glare continues to be minuscule.

CAS also alleged in a December 17, 1996 letter to NHTSA's Administrator that the count of 52 complaints of veiling glare from the dash was understated. According to that letter, CAS had determined there were at least 150 complaints of veiling glare among the more than 241,000 complaints. Thus, instead of representing 0.021 percent of complaints from the public, as acknowledged by NHTSA, CAS believed veiling glare actually represents 0.063 percent of the complaints NHTSA has received from the public.

NHTSA used a standardized computer keyword search of its complaints to arrive at its count of 52 relevant complaints. Even if NHTSA were to accept the CAS count of 150 dashboard glare complaints as accurate, the agency would still reiterate its previously-stated conclusion—so few complaints from the public about an aspect of design that has never been regulated on any of the hundreds of millions of vehicles on the road can reasonably be said to show there is no need for the agency to expend its limited resources to try to address dashboard glare, because the available evidence (NHTSA's complaints) indicate the public finds this to be an insignificant safety problem.

NHTSA saw no safety value in 1995 to continue to regulate components (such as windshield wiper blades, the steering wheel hub and interior mirror frame and mounting bracket) that still exist on new motor vehicles. Observing the types of components actually used in today's vehicles, the agency concluded that none of those components is a potential source of reflecting surface distraction in the driver's field of view.

In new vehicles in the late 1990's, the inside windshield metal moldings and horn rings are no longer provided. As for the other specified components, vehicle manufacturers have redesigned windshield wiper arms and blades so that many of them are recessed below the view of the driver when not in use. The arms and blades are usually black and finished with a matte surface. Manufacturers have placed air bags in steering wheel hub assemblies so that the hubs cannot be made of "bright metal" if the air bags are to deploy properly. The mirror frame and mounting bracket are made out of plastic.

NHTSA notes that in the almost thirty years that Standard No. 107 was in effect, vehicle manufacturers were not prohibited from installing vehicle components (including those specified in Standard No. 107) made out of metals with a matte or burnished surface. Styling considerations have apparently never introduced such dull metals into components in the line of sight of the driver or elsewhere in the vehicle interior in any significant volume. Lack of dull metals indicates that regardless of styling and other cosmetic considerations, vehicle manufacturers are choosing to reduce costs by minimizing metallic components in vehicles.

For these reasons, NHTSA's rescission of Standard No. 107 was not arbitrary and capricious but the result of a reasoned analysis, based on its observations of the new vehicle market.

2. "Identified Market Segments" Have Obtained Bright Metal Parts in the Aftermarket Despite Standard No. 107

In addition to issues arising from *State Farm*, CAS asserted that there are "identified market segments" with a demand for bright metal interior components. CAS stated its belief that the demand includes components regulated under Standard No. 107. CAS asserted that at least one manufacturer is eager to serve these markets and to respond to this and any other such consumer demand. But for Standard No. 107, CAS states that the manufacturer (Vehicle Improvement Products (VIP)) and others would freely serve these markets. As evidence, CAS pointed to VIP's comment in response to the June 26, 1995 NPRM that there is a demand for "polished and/or chrome plated steering wheel surfaces" as a contradiction to NHTSA's assertion that there is no market for bright metal components.

NHTSA believes that CAS's comment does not acknowledge a difference in applicability of the Standard between the new vehicle manufacturer and the after market equipment manufacturer. Standard No. 107 applied to new vehicles only, and did not regulate the actions of after market equipment manufacturers. Standard No. 107 applied to "passenger cars, multipurpose passenger vehicles, trucks, and buses." The Standard imposed restrictions on specified equipment in new vehicles. The Standard never prohibited sales of aftermarket equipment, including the components specified in Standard No. 107, that were made of bright metal that exceeded a specified specular gloss. Further, even in a new vehicle, the Standard did not generally regulate "steering wheel surfaces," it regulated only the hub of the steering wheel assembly.

Thus, even when Standard No. 107 was in effect, the Standard did not restrict equipment manufacturers, including VIP from selling shiny metallic steering wheels in the aftermarket, even if the steering wheel hubs did not meet the specular gloss limitations of Standard No. 107. (Whether a business could install a shiny metallic steering wheel hub without violating 49 U.S.C. § 30122, by making safety devices and elements inoperative, is not an issue within the scope of this rulemaking. However, NHTSA would not have had any authority over an owner installing a shiny metallic steering wheel hub in his or her own vehicle.)

CAS also pointed to the State of Connecticut's comments (in response to the June 1996 NPRM) that small aftermarket parts manufacturers are "quick to respond to market demands without fully evaluating all of the safety aspects on which their component would have an affect." Connecticut also commented that states can require vehicles to be maintained in compliance with FMVSS's to prevent such things as bright metal windshield wiper blades to be installed. It argued reliance on the FMVSS "quells market demand before the liability factors would surface."

In response to CAS's comments about Connecticut's views, we first note that CAS has not refuted the principal basis for the rescission: The evident and universal practice by vehicle manufacturers of designing their vehicles to avoid the use of metallic (or nonmetallic) components with glossy surfaces, whether or not regulated. Based on that practice, we do not believe that there will be a demand for original equipment glossy components on new vehicles. In the absence of any demand, there would be unlikely to be more than a negligible supply of those components produced by aftermarket manufacturers.

As earlier stated, when Standard 107 was in effect, the Standard did not prohibit a business from manufacturing glossy metallic vehicle components for the aftermarket or prevent an individual owner from installing, for example, a shiny steering wheel hub on his or her vehicle. Even so, the agency is not aware of any significant instances of

such manufacture or installation. Restrictions on equipment on registered vehicles and changes that owners may make on their own vehicles are matters of State law.

3. Standard No. 107 Was Never Intended to Address Glare Generally, and the Standard Will Not Be Reinstated and Expanded to Address "Veiling Glare"

CAS asserted that the Association of International Automobile Manufacturer's (AIAM) comment to the June 1995 NPRM, that since Standard No. 107 "does not cover all components for which manufacturers have needed to reduce glare," and "[i]n the absence of any concern [by NHTSA] that manufacturers have not addressed glare from these other components," the Standard is not necessary, should have "triggered alarm bells at the Agency as it contemplated rescinding the only standard regulating interior compartment glare."

CAS appears to believe that NHTSA has not considered the issue of potential glare from sources other than the components regulated in Standard No. 107. NHTSA does not agree, since the agency has in the past carefully looked at glare issues outside of Standard No. 107. As earlier stated, the NPRM (60 FR 32935, June 26, 1995) outlined NHTSA's past review of whether Standard No. 107's specular gloss limitations should be extended to non-metallic surfaces, or to other vehicle components. A summary of this discussion was provided earlier. For the reasons previously explained, NHTSA decided there is no evidence of any safety need to extend the scope of Standard No. 107. In addition, as has been previously noted, there is no evidence in the record of any significant use of unregulated components with glossy finishes by vehicle manufacturers.

CAS also suggests that the agency's desire to reduce glare from shiny metallic components arises from an underlying generalized concern about interior compartment glare. CAS therefore urges that Standard No. 107 be reinstated and expanded to address veiling glare, i.e., the reflection cast by light-hued and/or glossy surfaced dashboards onto the windshield.

As previously noted, Standard No. 107 never regulated veiling glare. On August 16, 1991 (56 FR 40853), NHTSA denied a petition from the CAS to amend Standard No. 107 by including the instrument panel surface as a regulated item, limiting "veiling glare" as a "major source of vision impairment." Since Standard No. 107 did not regulate veiling glare, CAS's comments on veiling glare are outside the scope of this rulemaking action and are not relevant to a petition for reconsideration of rescission of Standard No. 107.

IV. Dr. Allen's Petition

In a submission dated May 2, 1996, Dr. Merrill J. Allen, Professor Emeritus of Optometry of Indiana University (Bloomington, Indiana) petitioned NHTSA to reconsider rescinding Standard No. 107. Dr. Allen asserted that "Standard No. 107 needs to be strengthened, not rescinded." He estimated that crashes will increase more than 10 to 15% by rescinding Standard No. 107, but provided no information how he formulated this estimate. He urged NHTSA to reinstate Standard No. 107 and to amend the Standard by specifying a black flock or velvet finish on all motor vehicle dash panels, to minimize veiling glare.

Dr. Allen has not raised any new issues or presented any new evidence not considered in previous rulemakings. As previously noted, the veiling glare issue was addressed in 1991 by NHTSA in response to a rulemaking petition from CAS. NHTSA denied CAS's petition (56 FR 40843, August 16, 1991), after determining that there was no visibility problem which warranted Federal rulemaking. Further, since Standard No. 107 never regulated it, veiling glare is not germane to the rescission of the Standard.

V. Denial of Petitions for Reconsideration

NHTSA has considered the issues raised in the petitions for reconsideration filed by the CAS and by Dr. Allen. Because they presented no new evidence or issues, the petitions for reconsideration are denied.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: December 24, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–34085 Filed 12–31–97; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 63, No. 1
Friday, January 2, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Wasatch Powderbird Guides Outfitter and Guide Special-Use Permit, Wasatch-Cache National Forest, Salt Lake Ranger District, Salt Lake County, Utah and Uinta National Forest, Pleasant Grove and Spanish Fork Ranger Districts, Utah County, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Forest Service will prepare an environmental impact statement on Wasatch Powderbird Guides request for a five-year outfitter and guide special-use permit for guided helicopter skiing activities on National Forest Land.

DATES: Comments concerning the scope of the analysis should be received in writing by January 30, 1998.

ADDRESSES: Send written comments to Michael Sieg, District Ranger, 6944 South 3000 East, Salt Lake City, Utah 84121.

FOR FURTHER INFORMATION CONTACT: Rob Cruz, District Environmental Coordinator, (801) 943–9483.

SUPPLEMENTARY INFORMATION: Wasatch Powderbird Guides, a current "Special Use Permit" permittee, is proposing to operate a heli-skiing operation for another five-years along the Wasatch Front of the Wasatch-Cache and Uinta National Forests. This proposal includes elements on both public and private lands. Elements include the landing of helicopters to drop off and pick-up heli-skiers who are skiing across both public and private land holdings. A complete description of the proposal is available from the Salt Lake Ranger District. This proposal was originally scoped in January 1997, since then it was decided that there may be significant impacts, therefore an environmental impact statement is being completed. A letter explaining the decision to conduct an environmental impact statement, and soliciting comments will be sent to nearly 300 individuals, organizations and government agencies who responded to the original scoping dated January 27, 1997. Individuals, organizations or other government agencies may request a copy of the original scoping document and/or send additional comments by writing to the Salt Lake Ranger District.

Issues identified since January 1997 include effects on public safety, effects on Wilderness areas, effects of snowpack stability testing on vegetation, effects on wildlife, including golden eagles and threatened, endangered and sensitive species, effects on the economic viability of Wasatch Powderbird Guides and the local economy and effects to other winter recreationalists. Two preliminary alternatives have been identified. The proposed action alternative would permit the aforementioned heli-skiing operation with the following criteria: a limit of 2 helicopters, a 5-year average of 2400 skier days per year, a 5-year average of 1200 skier days per year in the Tri-Canyon (Mill Creek, Big, and Little Cottonwood Canyons) terrain and a 5-year average of 1000 explosives per year. The No Action alternative would eliminate helicopter skiing along the Wasatch Front and require a change to the current Forest Plan. Other alternatives will look at use rotation methods to reduce conflict between heli-skiing operations and other winter recreationalists.

The public is invited to submit comments or suggestions to the address above. Comments received from individuals, groups and government agencies received from the January 1997 scoping document will be incorporated into this analysis. The responsible officials are Bernie Weingardt and Peter Karp, Forest Supervisors. A draft EIS is anticipated to be filed in May 1998 and the final EIS filed in September 1998.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: December 23, 1997.

Michael Sieg,

District Ranger.

[FR Doc. 97–34202 Filed 12–31–97; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for Lima (OH) and the State of Virginia

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Lima Grain Inspection Service, Inc., and the Virginia Department of Agriculture and Consumer Services (Virginia) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: February 1, 1998.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW, Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the August 1, 1997, **Federal Register** (62 FR 41335), GIPSA asked persons interested in providing official services in the geographic areas assigned to Lima and Virginia to submit an application for designation. Applications were due by September 2, 1997. Lima and Virginia, the only applicants, each applied for designation to provide official services in the entire area currently assigned to them.

Since Lima and Virginia were the only applicants, GIPSA did not ask for comments on the applicants.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act and, according to Section 7(f)(1)(B), determined that Lima and Virginia are able to provide official services in the geographic areas for which they applied. Effective February 1, 1998, and ending January 31, 2001, Virginia is designated to provide official services in the geographic area specified in the August 1, 1997, **Federal Register**. Effective February 1, 1998, and ending January 31, 1999, Lima is designated to provide official services in the geographic area specified in the August 1, 1997, **Federal Register**.

Interested persons may obtain official services by contacting Lima at 419–223–7866 and Virginia at 757–494–2464.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: December 10, 1997.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 97–33829 Filed 12–31–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Santa Cruz River Watershed, Rio Arriba County, New Mexico

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Rules (7 CFR Part 650), the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the repair of Floodwater Retarding Structure 3 in the Santa Cruz River Watershed.

FOR FURTHER INFORMATION CONTACT: Rosendo Trevino III; State Conservationist; Natural Resources Conservation Service; 6200 Jefferson, NE; Albuquerque, NM 87109–3734; telephone 505–761–4400.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Rosendo Trevino III, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is flood prevention. The action includes the repair of one floodwater retarding dam.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency and various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Rosendo Trevino III.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Rosendo Trevino III,

State Conservationist.

[FR Doc. 97–34182 Filed 12–31–97; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Risk Management Agency

Dairy Options Pilot Program

AGENCY: Risk Management Agency, USDA.

ACTION: Advanced Notice of Availability; Request for Comments.

SUMMARY: This notice announces a public comment period on a new Dairy Options Pilot Program (DOPP) to be administered by the Risk Management Agency (RMA) in conjunction with the private sector. RMA plans to implement DOPP which would partially subsidize the purchase of put options for dairy producers. The objective of DOPP is to ascertain whether put options can provide producers with reasonable protection from the price risk. RMA is soliciting comments on DOPP, the method used to select program participants, and its information collections. RMA specifically requests comments on the role of brokers as outlined in the Broker Agreement contained in this Advanced Notice of Availability, whether the tasks required of the brokers including responsibilities listed in subsections 3(a) through 3(h), are appropriate and whether there are other cost-effective alternatives that would satisfy the program's need for accurate reporting and oversight while maintaining a significant role for the private sector in the program. The RMA was established by Public Law 104–127, on April 4, 1996.

DATES: Submit data, comments or opinions on or before February 2, 1998. The comment period for information collections under the paperwork Reduction Act of 1995 continues through March 3, 1998.

ADDRESSES: Interested persons are invited to submit written comments on the DOPP to Risk Management Agency, United States Department of Agriculture, Office of Insurance Services, 1400 Independence Avenue, S.W., STOP 0830, room 6739–S, Washington, D.C., 20250–0830. A copy of each response will be available for public inspection and copying from 7:00 a.m. to 4:30 p.m. EDT, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Joe Connor, Financial Analyst, Reinsurance Services Division, Risk Management Agency, at the Washington, D.C. address listed above, telephone (202) 720–4232.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act of 1995

The Risk Management Agency is seeking comments on the following Information Collection Request (ICR).

Title: Dairy Options Pilot Program.

Respondents/Affected Entities: Parties affected by the information collection requirements included in this advanced notice are producers and brokers.

Abstract: The dairy industry has recently witnessed unprecedented price volatility and, after 1999, will no longer

be eligible to receive USDA program benefits of any kind except export incentives.

The Federal Agricultural Improvement and Reform Act of 1996 (Act) authorized the Secretary of Agriculture to conduct, and RMA to administer, options pilot until December 31, 2002. RMA appreciates the active interest and initiative shown by the Coffee, Sugar, & Cocoa Exchange and the Chicago Mercantile Exchange in the development of this program which draws heavily from their ideas and input. If successful, the educational benefits of the DOPP to the producer will prepare the producer to manage price risk independently through the commodities futures and options markets.

Estimate of Burden: Public reporting burden for this collection of information is estimated at 15 minutes per participant because of the high degree of automation associated with the data collection.

Respondents: Producers and brokers.

Estimated Number of Respondents: 35,329.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 16,951 hours.

The information to be collected includes an application (Form CCC–320), a record of all trading activity on the producer's behalf and the actual prices obtained by the producer for the production, and a voluntary survey. The information collected from the application, trading record and prices received by the producer will be electronically submitted to FCIC by the broker or brokerage firm. Potential respondents to this information collection are dairy producers, brokers, and brokerage firms. The information collected will be used to determine producer eligibility, to track program compliance and to evaluate the effectiveness of the hedge positions.

Comments: RMA is requesting comments on the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has 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 or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

The Office of Management and Budget (OMB) is required to make a decision concerning the collections of information contained in this notice between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the notice.

Executive Order 12866

OMB has determined this notice to be significant for the purposes of Executive Order 12866 and, therefore, this notice has been reviewed by OMB.

Cost-Benefit Analysis

The program is designed to increase the level of understanding of options contracts as risk management tools among dairy producers and to explore their specific applicability to the dairy industry. The costs to the Government of options premium under the program are estimated to be about $10 million annually. If successful, the program will help create liquid markets in basic formula price (BFP) futures and options contracts which would be sustained, in part, by the on-going hedging of output price risk by dairy producers benefiting from the educational aspect of the program. Under that scenario, the benefits of the program would include furnishing producers with a viable price risk management alternative, exerting a stabilizing influence on the dairy industry, and contributing to the Department's goals of supporting market oriented reforms in the agricultural sector.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This notice contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this notice is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this notice does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this notice will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This notice will not have a significant impact on a substantial number of small entities. The provisions included in this notice will not impact small entities to a greater extent than large entities. All participants will be required to fill out an application and provide documentary evidence of monthly production for at least the previous six months. The amount of work required of brokers will only increase slightly because the information to determine the eligibility of producers and trading activities is already collected by brokers specializing in hedge positions and the only additional burden is collecting the price for the sale of production and the electronic transmittal of this information. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is not currently listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This notice has been reviewed in accordance with Executive Order No. 12988 on civil justice reform. The provisions of this notice will not have retroactive effect. The provisions of this notice will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before action against RMA for judicial review may be brought.

Environmental Evaluation

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an

Environmental Assessment nor an Environmental Impact Statement is needed.

Background

Section 191 of the Federal Agricultural Improvement and Reform Act of 1996 authorizes the Secretary of Agriculture to conduct a pilot program for one or more agricultural commodities to determine the feasibility of the use of futures and options as risk management tools to protect producers from fluctuations in price, yield and income. Accordingly, the Secretary has directed the RMA to develop the DOPP.

The intent of this notice is to solicit public comments on DOPP. DOPP will not be published as a proposed or final rule unless the program is offered to all producers on a nationwide basis. DOPP will be in effect when applications and contracts are made available by RMA and producers are provided actual notice of availability.

DOPP is intended to offer a risk management tool to dairy producers to offset the unprecedented price volatility, the elimination of price supports, and the current unavailability of production insurance. DOPP will be offered on a pilot basis to determine the feasibility of using commodity futures and options markets.

The program represents a joint initiative between RMA and the private sector. DOPP was first proposed to RMA by the Coffee, Sugar & Cocoa Exchange (CSCE). During the development of this program, the Chicago Mercantile Exchange (CME) provided additional recommendations. If successful, the educational benefits of DOPP will prepare producers to manage their price risk independently through the commodities futures and options markets.

DOPP is scheduled for initial implementation in thirty-six counties (six counties in each of six states). The program will be available in those states and counties as determined by RMA. The participation limit per county is set at 150 producers, subject to adjustments as described below. Counties with a higher number of participants signing-up will have participants selected through a lottery. Applicants who miss the opportunity to participate the first time the program is offered will get preference the next round. When a county has fewer than the maximum number of participants, the excess program vacancies will be pooled and distributed among counties where more than the maximum number has signed up. Producers wishing to participate in the program must fill out an application (Form CCC–320).

The program will last six months for each round of participants. For example, if registration and required training take place in December, the producer would begin buying options in January. The participant would be required to take options positions at least two months in the future to ensure some time in the position to allow for the educational benefits for the participant. Therefore, the producer would purchase options on the Basic Formula Price (BFP) futures for any of the months from April through September.

In order to introduce the new trading volume on to the markets slowly, each round of participants will commence trading at different times by state. RMA will also consider other phase-in ideas.

The two exchanges where the BFP futures and put options are currently available are the CSCE and the CME. The contracts on the two exchanges differ with regard to quantity. Under the program, a participating producer will be permitted to purchase contracts to hedge between 200,000 and 600,000 pounds of milk over a six-month period. Producers will be required to submit documentation supporting their operation's production of at least 200,000 pounds of milk over a six-month period.

RMA will enter into contracts with producers and brokers who elect to participate in DOPP.

Notice: The terms and provisions for the DOPP Producer Contract are as follows: United States Department of Agriculture, Risk Management Agency, Dairy Options Pilot Program Contract.

Participation in the Dairy Options Pilot Program is voluntary. Neither the United States, the Commodity Credit Corporation, the Federal Crop Insurance Corporation, the Risk Management Agency, the Department of Agriculture, nor any other Federal agency is authorized to guarantee that participants in this pilot program will be better or worse off financially as a result of participation in the pilot program than the producer would have been if the producer had not participated in the pilot program.

1. Definitions

Application. Form CCC–320 that is required to be completed and signed by the producer before the producer is eligible to participate in this program.

Basic formula price. The price established by the Department of Agriculture, and provided to the marketing order administrators to be used to set regional minimum prices, used in calculating the gains or losses under a put option.

Broker. A broker or brokerage firm registered under the Commodities Exchange Act that has entered into an agreement with RMA to participate in the program.

CME. Chicago Mercantile Exchange.

CSCE. Coffee, Sugar, and Cocoa Exchange.

Eligible markets. Commodity futures and options markets designated as contract markets under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*).

Exercise. The action taken by the holders of a put option on a futures contract if they wish to sell the underlying futures contract.

Expiration Date. The last date on which the put option may be exercised.

Futures contract. A contract to buy or sell a commodity on an eligible market at some point in the future.

Open outcry. Method of public auction required to make bids and offers in the trading pits, or rings, of commodity exchanges.

Out-of-the-money. Put option whose strike price is less than the underlying futures contract price.

Premium. The price of a put option determined by open outcry. The premium does not include related brokerage commission fees.

Producer. An individual, entity, or joint operation, which as owner, operator, landlord, tenant, or sharecropper, is entitled to share in the production available for marketing from the farm, or share in the proceeds thereof.

Program. The Dairy Options Pilot Program.

Put Option. A contract traded on eligible markets that gives the buyer the right to sell the underlying futures contract at the strike price on or before the expiration date.

RMA. Risk Management Agency, an agency of the United States Department of Agriculture.

Sale. Transfer of title through the selling of the value of the put option.

Settlement price. The price of a specific put option as published by the exchange on which that contract trades at the end of each day's trading.

Strike price. The price at which the holders of a put option may choose to sell the underlying futures contract.

2. Eligibility

(a) To be eligible for any benefits under this contract, a producer must:

(1) Be eligible for a production flexibility contract, a marketing assistance loan or any other assistance under the Federal Agricultural Improvement and Reform Act of 1996;

(2) Volunteer to participate in this program;

(3) Operate a farm located in a county selected for the pilot program; and

(4) Have documented production history of at least 200,000 pounds over the most recent six months.

(b) This program is available to producers in states and counties as designated by RMA.

3. Responsibilities

(a) Producers who elect to participate in the program agree:

(1) To attend not less than one training session conducted by RMA to educate the producer on the program's operation and the use of put options.

(2) To buy put options on a minimum of 200,000 pounds of milk on an eligible market, through an eligible broker, at some time over the first two months of the program's six-month duration beginning on the date the producer attends a training session;

(3) That put options on no more than 200,000 pounds of milk will be purchased for any one month under this program;

(4) That the put options will be purchased at least two months before the put options expire.

(5) That the put options will be purchased at a strike price that is at least 25 cents out of the money;

(6) That no put options will be sold or exercised before four weeks prior to the expiration date. (The producer may sell or exercise options purchased under this program at any time over the four weeks leading up to the expiration date.) If the producer exercises the put option and holds the futures contract, the producer assumes the risk of any losses; and

(7) The producer shall keep detailed records of each transaction including the purchase date and cost of each put option, the expiration date and month of the put options, the producer's cash market price for milk over the period of participation in the program, the difference between the cash market price and the BFP over the six-month duration of the program, whether the options were sold or exercised and, if sole or exercised, the date, and price of the futures contract on the date of sale or exercise.

(c) A producer must establish an account with a broker to participate in the program.

4. Costs

(a) The producer will pay 20 percent of the premium of each put option.

(b) RMA shall pay transactions costs equal to $30 per round turn and 80 percent of the premium.

(c) The broker will charge the producer's account for 20 percent of the premium per put option, and the transaction costs and the balance of the premium will be billed to RMA.

5. Restrictions and limitations

(a) Except as stated herein, total program participation will be limited to 150 producers per county. If more participants are enrolled than the county limit, a lottery will be held by RMA to determine participants within a county. If fewer than 150 participants are enrolled in a county, the number of unfilled participation slots will be pooled and redistributed over counties where enrollment exceeds 150.

(b) The producer will be able to order put options from a broker after:

(1) Providing the broker with a completed copy of the application;

(2) Providing marketing receipts of the producer's monthly production for the most recent six month period; and

(3) The broker has received verification from RMA of the producer's selection as a program participant.

(c) If a producer who has participated in the program is not in compliance with the provisions of this contract, the producer will be required to repay any premiums paid by RMA on behalf of the producer, in addition to any damages determined by RMA.

(d) No put options purchased through this program shall be purchased at a premium that is more than 160 percent of the previous day's settlement premium.

6. Other

(a) The National Futures Association, on behalf of the Commodity Futures Trading Commission, maintains a current listing of brokers and brokerage firms who are licensed to conduct futures-related business. However, only those brokers who have entered into an agreement with RMA will be eligible to trade put options under this program. To obtain a list of brokers approved by RMA, contact RMA at (202) 720–0191.

(b) To assist in the evaluation of the program, producers participating in the program may be asked to complete entry and exit surveys by RMA. While completion of these surveys is voluntary, producers are encouraged to do so in order that an accurate assessment may be made of this program's overall effectiveness.

(c) There may be tax consequences with respect to participation in this program. Producers interested in participating in the program who have questions regarding the tax issues associated with this program should seek the advice of a competent tax advisor who is familiar with put options.

(d) RMA is required to report all program payments issued on behalf of producers to the Internal Revenue Service (IRS). All premiums that are paid by RMA on behalf of producers participating in this program shall be reported to the IRS for the year of participation.

Notice: The terms and conditions for the DOPP broker agreement are as follows: United States Department of Agriculture, Risk Management Agency, Broker Agreement for the Dairy Options Pilot Program.

1. Definitions.

Application. Form CCC–320 that is required to be completed and signed by the producer before the producer is eligible to participate in this program.

Basic formula price. The price established by the Department of Agriculture, and provided to the marketing order administrators to be used to set regional minimum prices, used in calculating the gains or losses under a put option.

Broker. A broker or brokerage firm registered under the Commodities Exchange Act that has entered into an agreement with RMA to participate in the program.

CME. Chicago Mercantile Exchange.

CSCE. Coffee, Sugar, and Cocoa Exchange.

Eligible markets. Commodity futures and options markets designated as contract markets under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*).

Exercise. The action taken by the holders of a put option on a futures contract if they wish to sell the underlying futures contract.

Expiration Date. The last date on which the put option may be exercised.

Futures contract. A contract to buy or sell a commodity on an eligible market at some point in the future.

Open outcry. Method of public auction required to make bids and offers in the trading pits, or rings, of commodity exchanges.

Out-of-the-money. Put option whose strike price is less than the underlying futures contract price.

Premium. The price of a put option determined by open outcry. The premium does not include related brokerage commission fees. The premium is the maximum amount of potential loss to which the put option buyer may be subject.

Producer. An individual, entity, or joint operation, which as owner, landlord, tenant, or sharecropper, is entitled to share in the production available for marketing from the farm, or share in the proceeds thereof.

Program. The Dairy Options Pilot Program.

Put Option. A contract traded on eligible markets that gives the buyer the

right to sell the underlying futures contract at the strike price on or before the expiration date.

RMA. Risk Management Agency, an agency of the United States Department of Agriculture.

Round turn. The broker's service in transacting a single put option consisting of consultation services and the purchase and liquidation (sale or exercise) of a put option, including the subsequent sale of the underlying futures position if the put option is exercised.

Sale. Transfer of title through the selling of the value of the put option.

Settlement price. The price of a specific put option as published by the exchange on which that contract trades at the end of each day's trading.

Strike Price. The price at which the holders of a put option may choose to sell the underlying futures contract.

2. Eligibility

(a) To be eligible for trade options under this agreement, a broker must:

(1) Be properly licensed and in good standing with the National Futures Association;

(2) Volunteer to participate in this program; and

(3) Execute this agreement and comply with all its terms and conditions.

3. Responsibilities

(a) Brokers who elect to participate in the program agree to enforce the following program requirements with respect to any producer participating in the program who might use the broker's services:

(1) To buy put options on a minimum of 200,000 pounds of milk on an eligible market at some time over the first two months of the program's six-month duration beginning on the date the producer attends a training session conducted by RMA;

(2) That put options on no more than 200,000 pounds of milk shall be purchased for any one month under this program;

(3) That put options will be purchased at least two months before the put options expire;

(4) That the put options will be purchased at a strike price that is at least 25 cents out of the money; and

(5) No put options will be sold or exercised before four weeks prior to the expiration date. The producer may sell or exercise options purchased under this program at any time over the four weeks leading up to the expiration date.

(b) Brokers who participate in the program must collect from the producer:

(1) A signed copy of the application (Form CCC–320);

(2) Marketing receipts of the production history of the producer for at least the most recent 6 month period; and

(3) The cash market price for the producer's production at the time of each order and liquidation.

(c) Broker's should not accept applications from any producer whose marketing receipts do not evidence production of at least 200,000 pounds over the most recent six months.

(d) The broker must keep detailed records of each transaction including:

(1) The purchase date and premium for each put option;

(2) The expiration date and month for each put option;

(3) The producer's cash market price for the production at the time of each order and liquidation;

(4) The difference between the cash market price and the BFP over the six month duration of the program; and

(5) Whether the options are sold or exercised and, if sold or exercised, the date and price of the futures contract on the date of sale or exercise.

(f) The broker must transmit to RMA, through electronic data transmission, the information contained on the application and information specified in subsection (f). Brokers certify that systems used to transmit data will be Year 2000 compliant, i.e., be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, and to properly exchange date/time data with other information technology. Data transmission requirements and Year 2000 compliancy guidelines are available upon request.

(g) The broker can not conduct any trades under this program on behalf of any producer until notified by RMA that the producer has been accepted into the program.

4. Costs

(a) The broker will receive a transaction fee of $30 per round turn from RMA. Any transactions costs agreed upon between the broker and a producer in excess of $30 will be the sole responsibility of the producer and not of RMA.

(b) The broker will charge the producer's account for 20 percent of the premium per put option. The 20 percent of the transaction for which the producer is responsible is the sole responsibility of the producer and not of RMA.

(c) The broker will bill the transaction costs and the balance of the premium to RMA.

5. Restrictions and Limitations

(a) If a broker participating in the program through this agreement is not in compliance with the provisions of this agreement, the broker will be required to repay any transactions costs on the put options subsidized by RMA and traded by the broker under the program, in addition to any damages suffered by RMA.

(c) No put options purchased through this program shall be purchased at a premium that is more than 160 percent of the previous day's settlement premium.

6. Other

(a) To assist in the evaluation of the program, brokers participating in the program may be asked to complete entry and exit surveys by RMA. While completion of these surveys is voluntary, brokers are encouraged to do so in order that an accurate assessment may be made of this program's overall effectiveness.

(b) RMA is required to report all program payments issued on behalf of producers to the Internal Revenue Service (IRS). All premiums that are earned by producers participating in this program shall be reported to the IRS for the year of participation.

Signed in Washington, D.C., on December 29, 1997.

Garland Westmoreland,

Acting Administrator, Risk Management Agency.

[FR Doc. 97–34189 Filed 12–31–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120497B]

Marine Mammals; Environmental Assessment on Preventing California Sea Lion Foraging and Predation on Salmonids at the Willamette Falls, Oregon

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

ACTION: Notice of availability and finding of no significant impact.

SUMMARY: NMFS announces the availability of an Environmental Assessment (EA) that examines the

environmental consequences of preventing California sea lion foraging and predation on salmonids at the Willamette Falls in Oregon. The proposed action consists of non-lethal measures that are authorized under the Marine Mammal Protection Act (MMPA). NMFS has evaluated the environmental consequences of the proposed action and has concluded that it is unlikely to result in any significant impacts on the human environment and, therefore, has made a finding of no significant impact (FONSI).

ADDRESSES: A copy of the final EA may be obtained by writing to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Joe Scordino (206)526–6143, or Tom Eagle (301)713–2322.

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Service, in cooperation with the Oregon State Department of Fish and Wildlife (ODFW), prepared an EA that examines the environmental consequences of three alternatives for preventing sea lion foraging and predation on returning adult salmonids and outmigrating smolts at Willamette Falls: (1) No action; (2) non-lethal removal of California sea lions (proposed action); and (3) lethal removal of sea lions foraging at the Falls. The proposed action is to implement a program of non-lethal measures to prevent sea lion predation at the Willamette Falls while continuing to monitor the resource conflict at this site. The proposed action is authorized under section 109(h)(1)(C) of the MMPA, which allows the non-lethal removal of nuisance marine mammals by local, state, and Federal officials.

A draft EA was made available for a 30-day public comment period. NMFS published a notice in the **Federal Register** on March 13, 1997 (62 FR 11845), that announced the availability of the draft EA and requested public comments. Seven public comments were received, and the EA was revised in response to the comments. A summary of the comments received and responses to the comments are given here:

Comment 1: The situation at the Willamette Falls does not warrant lethal removal.

Response: Lethal removal of sea lions at Willamette Falls is not proposed because it has not been authorized under section 120 of the MMPA. Section 120 provides a process for a state to obtain authority for lethal removal, but Oregon has not applied for this authority.

Comment 2: The proposed action does not address all of the potential factors causing depletion of salmonids in the system. One commenter suggested that causes of salmonid population decline should be investigated, and another recommended that NMFS and ODFW evaluate and assess predation in comparison to other factors.

Response: The State is addressing other factors that may be affecting the decline of salmonids in the Willamette River basin; however, the principal cause for decline appears to be the reduced ocean survival. The scope of the EA and the proposed action, which complements State efforts to address other factors affecting salmonids, is limited to addressing the increasing presence of California sea lions foraging at the Falls and the prevention of predation from escalating to a point where it may impact salmonids, especially if the salmonid stocks remain low or decline further.

Comment 3: The proposed action is consistent with general state fish and wildlife authorities.

Response: NMFS agrees.

Comment 4: The EA does not show that predation has caused the decline of the runs or is likely to have caused a negative effect on the run. Commenters noted that the decline of steelhead and spring chinook salmon occurred before sea lions could have had any noticeable effect, and, therefore, actions to reduce sea lion predation are unwarranted. One commenter supported the no-action alternative because sea lions are not the cause of the decline.

Response: NMFS agrees that sea lion predation is not the cause of the decline; however, if action is not taken to address increasing foraging by sea lions, predation may increase to a point where predation is impacting salmonid stocks in the Willamette River, especially if the number of returning adults remains low or declines further.

Comment 5: An Environmental Impact Statement (EIS) should be prepared in order to provide a more comprehensive appraisal of this action.

Response: An EIS is not required for this action because the environmental consequences of non-lethally removing a few sea lions from the Willamette Falls area will not result in any significant impact to the environment.

Comment 6: The removal (lethal or non-lethal) of sea lions could result in increased predation. Commenters were concerned that the removed sea lions will be quickly replaced by other animals. One commenter also was opposing the use of underwater firecrackers or other methods which may inadvertently result in an increase of predation in the long term because these methods have not been shown to have lasting effectiveness in other applications.

Response: Because sea lions are opportunistic predators, predation patterns develop relative to animal presence, prey availability, and vulnerability. Based on observations at the Ballard Locks in Washington, different methods of sea lion removal may be more or less effective in reducing sea lion presence or in reducing the vulnerability of fish to predation, depending upon the number of animals involved and the location or circumstances of the predation. NMFS believes that the proposed action will prevent sea lion foraging and predation on salmonids at the Willamette Falls because the number of sea lions to be removed is still small, the patterns of predation do not appear well established, and the area is geographically remote from where sea lions normally occur; thus, inseason replacement is unlikely. In contrast, the alternative of taking no action to prevent foraging and predation will likely result in escalation of the problem because animals already present will become more effective at catching salmonids at the site, and new animals will learn these effective strategies as they arrive.

Comment 7: An additional alternative should be added to investigate the real and primary cause of the fish run declines (e.g., hatchery fish competition, fish passage problems due to construction and operation of the fishway and dam, water, and general habitat degradation) and to implement solutions to mitigate them.

Response: The scope of the proposed action is limited to preventing sea lion predation; measures to address other causes of salmonid declines are underway by the State, and a separate alternative on such actions is unnecessary and outside the scope of this action. Natural production (wild spawning) of spring chinook is low, owing primarily to lost spawning habitat. As mitigation for lost wild production, the majority of the spring chinook are hatchery produced. Hatchery produced spring chinook originate from native stocks and are virtually indistinguishable from wild spawners. Hatchery release practices and harvest regulations for hatchery steelhead are designed to minimize competition for available wild spawning habitat. Ocean productivity over the past several years has been influenced by a multi-year climatic event (El Nino) that has impacted ocean survival of

salmonid stocks, including those returning to the Willamette. Nonetheless, if numbers remain low or decline further, the potential for sea lion predation to have a significant impact remains real, and non-lethal removal actions are warranted.

Comment 8: No actions should be taken with sea lions until the proposed non-lethal deterrents are tested and an implementation plan is developed. The commenter recommended that an independent group of pinniped and fisheries biologists be established to oversee the development of a monitoring and research plan for evaluating the effectiveness of various non-lethal deterrents.

Response: NMFS has tested and implemented the non-lethal deterrence measures in pinniped interactions elsewhere on the Pacific Coast, with no discernable deleterious affects on California sea lions or serious injuries to personnel. Implementation of the individual measures will be dependent on available resources during a given season. NMFS will continue to request assistance from independent experts when necessary; however, the formation of an oversight committee is not necessary or warranted for actions taken under section 109 of the MMPA.

Comment 9: Non-lethal removal should not be authorized under section 109 (h)(1)(C) because the EA does not specify the numbers of animals to be taken, specify the exact methods to be used, specify the risk of injury or mortality to individual animals, provide evidence that sea lion predation is adversely affecting fish passage, or provide scientific data on the degree of impact of sea lion predation on the affected stocks.

Response: Section 109(h)(1)(C) of the MMPA authorizes the taking of marine mammals by public officials during the performance of their official duties. This authorization does not require the specification of the number of animals to be taken, exact methods, degree of risk, or evidence that the animals to be taken have exceeded some pre-determined behavioral threshold. However, some of these factors would need to be considered for authorization for the lethal removal of individually identifiable pinnipeds under section 120 of the MMPA.

Comment 10: The proposed action does not appear likely to contribute to the enhancement of Willamette River fish runs. One commenter stated that non-lethal removal of sea lions can only give a false hope of salmonid recovery because sea lions have not been determined to be negatively affecting the fish runs.

Response: The proposed action is to reduce or eliminate sea lion predation on salmonids and to prevent it from escalating to a point where it may negatively impact salmonid runs at this site. Predation is one of the factors affecting survival of adult spawners, and reduction or elimination of this mortality factor should, therefore, contribute to the enhancement and recovery of the involved salmonid runs.

Comment 11: Neither the regulations nor the statute provides a definition of what constitutes a "nuisance animal," and, lacking a definition, the commenter found it difficult to evaluate whether sea lions at Willamette Falls are a nuisance animal.

Response: NMFS acknowledges that neither the statute nor the implementing regulations provide a specific definition for "nuisance" marine mammal. However, the legislative history of the MMPA includes removal of seals from a fish ladder as an appropriate interpretation of the nuisance animal provision. Sea lions constitute a nuisance at the Falls because their foraging and predatory behavior is contrary to the purpose of the fishway to pass fish upstream, and uncontrolled predation at freshwater sites outside the normal habitat of sea lions, especially where fish are congregated and vulnerable to predation, is contrary to conservation efforts for recovering depressed and declining fish stocks.

Comment 12: The EA incorrectly states that Willamette Falls is outside the normal range of California sea lions.

Response: As the California sea lion population has increased since the early 1970s, reports of animals occurring in areas previously not documented have also increased. NMFS is not aware of any documented historical occurrence of California sea lions at the Willamette Falls other than the sightings noted in the EA and, therefore, considers the occurrence of sea lions far upriver at the Falls in a freshwater environment to be beyond the normal range.

Comment 13: The nuisance determination is not appropriate because the effect of sea lions on fish runs may be only negligible.

Response: Section 109 of the MMPA does not establish a threshold of damage that must be exceeded in order for a determination to be made on whether an animal is a nuisance. The non-lethal removal measures proposed are to reduce or eliminate sea lion predation on salmonids and to prevent it from escalating to a point where it may negatively impact the fish runs. If lethal removal were to be used under section 120 of the MMPA, then it would be necessary to show that individual pinnipeds are having a significant negative impact on the status or recovery of salmonid populations that are listed under the Endangered Species Act (ESA) or approaching listing.

Comment 14: To effectively recover the salmonid populations, additional restrictions should be placed on commercial and recreational fisheries, barriers to passage should be removed, spawning habitat should be restored, hatchery operations should be improved, and power generating operations should be evaluated. The commenter recommended that the burden to conserve fish stocks should be distributed proportionately among all human causes before penalizing sea lions for eating fish.

Response: The State is addressing factors affecting the status of salmonid populations, including restricting commercial and recreational fisheries. Reducing or eliminating sea lion predation will be complementary to other State efforts to enhance and restore salmonid runs. In regard to barriers to passage, the Willamette Falls is a natural barrier to fish passage and the fishway was constructed to enhance adult passage to spawning habitat.

Comment 15: The design and construction of existing fishways should be re-evaluated to devise ways for salmonid species to avoid sea lion predation.

Response: Plans are underway to modify the fishway to improve fish passage. An engineering evaluation of the fishway was completed in 1992, and that report is now referenced in the EA. Fishway design and alteration information were not included in the draft EA because contract work and planning processes for fishway maintenance and modification are proceeding separately and are outside the scope of the EA. The area of focus for preventing sea lion foraging and predation on salmonids is outside the fishway in adjacent areas including below the Falls.

Comment 16: The monitoring program should have been implemented before an EA was considered, rather than basing the proposed action on undocumented observations.

Response: The proposed action is based on results of observations by biologists in 1995 as well as on ODFW-conducted monitoring programs in 1996 and 1997 (as described in the EA), which documented sea lion predation on steelhead and spring chinook.

Comment 17: Introduced salmonid runs do not warrant the conservation protection of native runs.

Response: Introduced salmonid runs in the Willamette basin, such as summer

steelhead, have been made possible by the improved fish passage conditions afforded by the construction of the fish passage facility. These fish have been added to increase and support fishing opportunities in response to public demand. Sport fishing for salmonids is a popular and economically significant industry in the Willamette River basin. The introduced runs have been maintained over several decades without detrimental effect to native Willamette River basin salmonid runs because of hatchery release practices and harvest regulations. Timing of the two steelhead stocks overlap below the Falls, and sea lions are, therefore, likely to intercept both native and non-native stocks when foraging.

Comment 18: The methods of capturing and relocating sea lions are inadequately described.

Response: The EA has been revised to provide additional information on capture and translocation of sea lions. More detailed information on California sea lion captures and relocation is included in prior EAs prepared by NMFS (referenced in the EA) for non-lethal measures implemented at the Ballard Locks, and these EAs are available to the public.

Comment 19: The non-lethal options should not be considered safe because they have not been adequately tested.

Response: The non-lethal options included in the proposed action have been used previously in other locations and will be implemented under protocols to ensure safety to sea lions as well as personnel involved. The possibility of a sea lion mortality resulting from the proposed measures is very remote.

Comment 20: The use of underwater firecrackers may deafen sea lions.

Response: Observations at the Ballard Locks show that individual sea lions continue to respond to noise stimuli in spite of repeated exposures to firecrackers. Nonetheless, it is possible that a close exposure to an exploding firecracker may cause temporary or possibly permanent deafness, so dispatch of firecrackers should be used with caution.

Comment 21: Aversive conditioning should not be used because this technique did not successfully deter sea lions at the Ballard Locks.

Response: Aversive conditioning was previously found to be ineffective for use at the Ballard Locks because of difficulties in administering repeat treatments, which are necessary to achieve lasting effect. This method has been included in the proposed action because repeat treatment opportunities may be available at Willamette Falls.

Comment 22: The EA incorrectly states that sea lions have negatively affected steelhead at the Ballard Locks.

Response: Based on extensive studies since 1985, NMFS has determined that predation by sea lions is a principal factor affecting the spawning escapement of returning adult winter steelhead in the Lake Washington basin (migrating through the Ballard Locks). The determination is well documented in several EAs prepared by NMFS and by the Washington Department of Fish and Wildlife.

Comment 23: If sea lions are deterred from the area, it should be done in a minimally invasive and humane manner. One commenter recommended that NMFS should limit the study and implementation of sea lion deterrence measures to those that are humane and realistically promising (e.g., alternative barrier designs, expanded acoustic deterrence devices).

Response: Section 109 of the MMPA specifies that the taking of a marine mammal by public officials during the performance of their duties shall be accomplished in a humane manner. The non-lethal measures included in the proposed alternative are not expected to cause mortality or serious injury and are intended to have the desired effect of removing foraging sea lions from the area. Additional use of barrier gates in other entrances to the fish ladder will be considered if observations indicate that sea lions are entering the fishway through those entrances. The use of acoustic deterrent devices is included in the proposed action.

Comment 24: The funds spent on sea lions should be used for such other factors as fish passage, competition with hatchery fish, and habitat concerns.

Response: The State is addressing other factors that may be affecting salmonids in the Willamette River basin, and the removal of sea lions will complement those efforts. Non-lethal removal measures will be combined with the NMFS-funded sea lion monitoring program to minimize costs. Efforts to improve and update the fishway are proceeding under different funding.

Comment 25: The EA should provide more information on why fish use fishway entrance 1 so much less than other ladder entrances.

Response: It is difficult to fully assess passage through entrance 1 in comparison with the other three fishway entrances because of fishway configuration. The different entrances have been constructed to provide passage opportunities for fish under a wide range of flow conditions. Passage conditions during the spring result in greater passage by spring chinook and steelhead through fishway entrance 2, whereas fall chinook more frequently use fishway entrance 1. The EA has been modified to provide this clarification.

Comment 26: The goal of resource managers should be the restoration of native fish runs that have declined rather than reducing sea lion predation.

Response: NMFS and ODFW agree that the restoration and maintenance of native fish populations are important goals, and the State is active in addressing these goals. Prevention of sea lion foraging in locations where declining runs are concentrated and vulnerable does not conflict with this goal.

Comment 27: The construction of dams is the single most likely cause for salmonid declines, not sea lion predation.

Response: Dam construction in the Willamette River basin has been completed for decades, and salmonid stocks have been maintained through successful hatchery practices and fishery regulation. Low ocean survival conditions over an extended period have affected returns in recent years in spite of stable hatchery production.

Comment 28: The capture and relocation of sea lions are unlikely to be successful and will not significantly benefit salmonids passing through the Willamette Falls fishway. The commenters suggested new sea lions would probably replace those that have been removed.

Response: NMFS agrees that previous translocation efforts with California sea lions from the Ballard Locks have not been totally successful. However, due to the distance inland to the Falls and the small numbers of animals found far upriver, other sea lions may not immediately replace animals that have been deterred or removed from the area of the Falls.

Comment 29: Because experience with the use of the partially submerged cage trap is inadequate, raising concerns for the safety of personnel and the possible drowning of sea lions exist.

Response: The trap design maintains open air space above the surface of the water to allow a captured animal to surface and breathe, thereby negating a concern for animals drowning. The trap was successfully used to capture and handle an adult harbor seal without mishap or injury.

Comment 30: Active capture techniques will present high risk to sea lions and humans.

Response: Techniques that involve an elevated level of risk for the animals, such as tangle nets and anesthetizing

drugs, are not proposed for use at Willamette Falls because protocols for their implementation in the moving river environment have not been developed. The final EA has been modified to clarify that active capture using tangle nets in the river is not proposed.

Comment 31: Non-lethal removal of sea lions should not occur until the salmonid stocks are threatened with extinction by predation.

Response: Section 109 of the MMPA does not require that salmonid stocks must be approaching an endangered status before non-lethal taking of sea lions can occur. The intent of the proposed action is to be proactive and prevent predation from increasing to a point where it may have a negative impact on the salmonid stocks.

Comment 32: The EA should provide more detail on the dams, hatcheries, rivers and tributaries, river flows over time, fluctuations in salmonid populations, numbers of salmonids using the locks, and suitable conditions for passage. The commenters also stated that it would be helpful if the document was expanded to explain the operation of the locks, the paper mill and power generation, and the allocation of water between fish passageways, and to provide more information on genetic relationships of runs, limiting factors on salmonid populations, water quality or industrial outflows, redd counts, habitat considerations, harvest regulation, and hatchery surpluses.

Response: The EA has been modified to address additional background information, and references that provide more details have been incorporated in the EA.

Comment 33: The information on fish runs and passage should be presented in a tabular format for clarification.

Response: The EA has been modified to include tables on spring chinook and steelhead runs and passage.

Comment 34: The EA does not demonstrate that sea lions are having a significant, deleterious effect on passage.

Response: Non-lethal removal of sea lions from the fish passage facility are authorized under section 109(h), which does not require a demonstration that a significant, deleterious effect is occuring; however, NMFS and ODFW have investigated fish passage at the Willamette Falls facility. Observations suggested that sea lions were adversely affecting fish passage by foraging at the entrance to the fish ladder and preventing access, and consuming and dispersing adult salmonids that were attempting to enter the fishway to progress upstream. Until a barrier was installed in entrance 1 to the fish ladder, sea lions were foraging on salmonids inside the fish ladder, thereby preventing fish passage.

Comment 35: The EA should describe the possibility that the California sea lion population, with its population growth, may be poised for a population crash.

Response: There is no evidence of density dependent signals to indicate that the sea lion population is approaching carrying capacity. When that occurs, the population will fluctuate in response to factors that limit continued growth.

Comment 36: The EA should explain why Willamette River chinook salmon are candidates for listing under the ESA.

Response: A coastwide status review of chinook salmon on the Pacific coast is in progress to determine the status of chinook salmon populations with respect to the ESA; therefore, until the status review is completed, Willamette River spring chinook are considered candidate species under the ESA. The EA has been modified to include this clarification.

Comment 37: The EA does not specify which run of steelhead was consumed by sea lions.

Response: Winter and summer steelhead are present below the Falls concurrently, and observers are not able to differentiate steelhead when predation is observed.

Comment 38: Summer steelhead are hatchery-produced fish with no shortage of availability; management strategies can provide flexibility for the time being.

Response: The focus of the proposed action is to prevent predation on winter steelhead and spring chinook, and summer steelhead are present during the same period. Nonetheless, the summer steelhead population also has declined in spite of hatchery production due to reduced ocean survival conditions that are also affecting winter steelhead and spring chinook salmon. If ocean survival conditions do not improve and run numbers continue to decline, management options will continue to erode and hatchery operations could be jeopardized.

Comment 39: The EA incorrectly states that there is no controversy or uncertainty on the effects of the proposed non-lethal removal measures.

Response: The proposed action is to use non-lethal measures that have been used and assessed at the Ballard Locks. These actions have been demonstrated to have no adverse effect on California sea lions, and, therefore, there is no scientific controversy or uncertainty on the effects of the proposed non-lethal removal actions. The final EA includes a complete description of the finding of no significant impact of the proposed action.

Comment 40: The decline in winter steelhead from 1995 to 1996 was reported as 72 percent, but it should be 62 percent.

Response: The steelhead run declined from 4,693 in 1995 to 1,801 in 1996, which is a 62 percent decline. The EA has been corrected.

Comment 41: The total time that sea lions were present in 1995 and an estimate of total predation are not in the EA.

Response: Observations in 1995 were quite limited and no data were collected on the total time spent foraging by sea lions that year; therefore, no extrapolation of predation was attempted. An estimated kill rate for the limited time observed in 1995 is included in the EA.

Comment 42: The EA mischaracterizes animal protection groups' support for the no-action alternative because the benefit is that sea lions would not be disturbed.

Response: NMFS has received comments favoring no action to prevent sea lion foraging and predation, and the EA has been modified to reflect this.

Comment 43: The EA incorrectly states that the no-action alternative will likely result in a negative reaction by a large sector of the public. The commenter suggested that this applies only to the opinions of fishers.

Response: NMFS and ODFW have received numerous telephone calls from members of the public requesting that the resource agencies take some action to remove sea lions from Willamette Falls. The characterization of total representation in comparison to general population has been deleted from the EA.

Comment 44: The EA is not correct that many people would resent their tax dollars being spent on hatchery production that results in food only for sea lions. The commenter felt that many people would resent tax dollars spent on non-lethal removal of sea lions.

Response: NMFS and ODFW have received numerous complaints from members of the public regarding the past lack of action by resource agencies to stop sea lions from feeding on salmonids at Willamette Falls while fisheries are being restricted and fish numbers are low. The EA has been modified to indicate that comments have been received favoring no action as well.

Comment 45: The EA should provide more detailed information on the barrier gate and its effectiveness. One

commenter noted that observations made at fishway entrance 1 indicate that sea lions commonly forage at the face of the barrier gate, and out to about 10 feet (3.048 meters) below the barrier. One commenter questioned whether the barrier gate could be expanded from riverbank to riverbank to keep sea lions out of area.

Response: The EA has been modified to include additional observations on the barrier gate. The barrier gate prevents predation from occurring within the fish ladder at fishway entrance 1, but it has not stopped sea lions from foraging at the face of the barrier and areas adjacent to the fish ladder entrance. The installation of barrier gates at other fish ladder entrances will be assessed if foraging inside those entrances is noted. A physical barrier across the Willamette River is not feasible or practical.

ACTION: The EA has been modified as described in the responses to the comments. NMFS has evaluated the environmental consequences of the alternatives and has concluded that the proposed action is unlikely to result in any significant impacts on the human environment and, therefore, has made a finding of no significant impact (FONSI). The EA and FONSI have been prepared in accordance with National Environmental Policy Act (NEPA) and with implementing regulations at 40 CFR parts 1500 through 1508 and NOAA guidelines concerning implementation of NEPA found in NOAA Administrative Order 216-6.

Copies of the EA and FONSI are available (See **ADDRESSES**).

Dated: December 22, 1997.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–34145 Filed 12–31–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122397E]

Marine Mammals

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

ACTION: Notice of availability of revised marine mammal stock assessment reports.

SUMMARY: NMFS has incorporated public comments into revisions of marine mammal stock assessment reports. The revision, which was initiated in 1996 is now complete, and copies of the revised reports are available to the public.

ADDRESSES: Printed copies may be obtained by writing to one of the following: Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments; Douglas P. DeMaster, Alaska Fisheries Science Center (F/AKC), NMFS, 7600 Sand Point Way, Seattle, WA 98115–0070 regarding Alaska regional stock assessments; James Lecky, Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802–4213, regarding Pacific regional stock assessments; or Gordon Waring, Northeast Fisheries Science Center, NMFS, 166 Water Street, Woods Hole, MA 02543–1097 regarding Atlantic regional stock assessments.

FOR FURTHER INFORMATION CONTACT: Thomas C. Eagle, (301) 713–2322, Douglas P. DeMaster, (206) 526–4045 regarding Alaska regional stock assessments; James Lecky, (562) 980–4020 regarding Pacific regional stock assessments; or Gordon Waring, (508) 495–2000 regarding Atlantic regional stock assessments.

SUPPLEMENTARY INFORMATION: Section 117 of the Marine Mammal Protection Act (MMPA) requires NMFS and the U.S. Fish and Wildlife Service to prepare stock assessment reports for all marine mammal stocks that occur in waters under the jurisdiction of the United States. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stocks. NMFS completed the 1996 draft stock assessment reports and made them available for public review and comment on January 21, 1997 (62 FR 3005). During the public comment period and subsequent to it, NMFS consulted extensively with Scientific Review Groups (SRGs), established also under the MMPA, to discuss their comments, as well as the comments received from the public. The results of the different SRG discussions and comments received from the public, conservation organizations, state, and other Federal agencies were reviewed and incorporated into these final reports as appropriate. The 1996 final marine mammal stock assessment reports have now been completed and are available for distribution.

Dated: December 24, 1997.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–34218 Filed 12-31-97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122397G]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (work session).

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Technical Team (STT) will hold a work session which is open to the public.

DATES: The work session will begin at 10 a.m. on Tuesday, January 20, 1998, and continue from approximately 8 a.m. to 5 p.m. each day through Friday, January 23, 1998.

ADDRESSES: The work session will be held at the Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dr. John Coon, Salmon Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the STT work session is to draft the "Review of 1997 Ocean Salmon Fisheries." The final report will be distributed to the public and reviewed by the Council at its March 1998 meeting in Millbrae, CA.

Although other issues not contained in this agenda may come before this Team for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Team action during this meeting. Team action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

The work session is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Eric Greene at (503) 326–6352 at least 5 days prior to the work session date.

Dated: December 23, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–34146 Filed 12–31–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122397F]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) will hold a meeting to discuss stock assessment plans for 1998. The meeting will be open to the public.

DATES: The meeting will begin on January 12, 1998 at 1:00 p.m. (Pacific Standard Time), and continue at 8 a.m. on January 13 until business is completed.

ADDRESSES: The meeting will be held at the Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Larry Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to plan the stock assessment process for groundfish species in 1998. The meeting will consider revisions to the terms of reference used for 1997 stock assessments, revise the goals and objectives for the annual stock assessment cycle, develop a calendar for 1998 stock assessment activities, confirm the list of species to be assessed in 1998, designate the resources and personnel for the assessments and the reviews, and discuss ways of improving coordination of the process.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to Mr. Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: December 23, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–34147 Filed 12–31–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 13 & 14 January 1998.

Time of Meeting: 0830–1630, 13 Jan 98. 0830–1300, 14 Jan 98.

Place: CECOM HQ—Ft. Monmouth, NJ

Agenda: The Army Science Board's (ASB) Issue Group Study on "Army Avionics Modernization Methodologies" will meet for briefings and discussions on Army avionics modernization methodologies, Army avionics Science and Technology programs, and open systems architecture. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call our office at (703) 695–0781.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 97–34181 Filed 12–31–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; U.S. Drug Testing, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to U.S. Drug Testing, Inc., a revocable, nonassignable, exclusive license in the United States and certain foreign countries to practice the Government owned invention described in U.S. Patent No. 5,183,740, entitled "Flow Immunosensor Method and Apparatus," issued February 2, 1993, in the field of saliva based human diagnostics.

DATES: Anyone wishing to object to the grant of this license must file written objections, along with any supporting evidence, not later than March 3, 1998.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217-5660, telephone (703) 696–4001.

Authority: 35 U. S. C. 207; 37 CFR Part 404; 32 CFR Part 746.

Dated: December 19, 1997.

Michael I. Quinn,

Lieutenant Commander, Judge Advocate General's Corps, U. S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 97–34201 Filed 12-31-97; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF ENERGY

Department of Energy (DOE) Implementation Plan for Recommendation 97–2 of the Defense Nuclear Facilities Safety Board (DNFSB), Criticality Safety

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board published Recommendation 97–2, concerning criticality safety at defense nuclear facilities in the DOE complex, on May 29, 1997 (62 FR 2918). Under section 315(e) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(e), the Department of Energy must transmit an implementation plan on Recommendation 97–2 to the Defense Nuclear Facilities Safety Board after acceptance by the Secretary. The Department's implementation plan was sent to the DNFSB on December 12, 1997, and is available for review in the Department of Energy Public Reading Rooms and on the internet site, http://dr.tis.doe.gov/.

ADDRESSES: Send comments, data, views, or arguments concerning the implementation plan to: Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Dr. Robin Staffin, Deputy Assistant Secretary for Research and Development, Office of Defense Programs, Department of Energy, 1000 Independence Avenue, SW, Washington D.C. 20585.

Issued in Washington, D.C., on December 23, 1997.

Joseph Arango,

Acting Departmental Representative to the Defense Nuclear Facilities Safety Board.

December 12, 1997.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, N.W., Suite 700, Washington, D.C. 20004.

Dear Mr. Chairman: We are pleased to forward the Department's Implementation Plan for Defense Nuclear Facilities Safety Board's Recommendation 97–2, Criticality Safety. This Plan addresses the need for improved criticality safety practices and coherent programs to alleviate the potential adverse impacts on safety and productivity of Department of Energy operations. It builds upon the successful actions taken in response to Board Recommendation 93–2, The Need for Critical Experiment Capability, which is being implemented through the Nuclear Criticality Predictability Program. Because the Implementation Plan for Recommendation 97–2 incorporates ongoing Nuclear Criticality Predictability Program activities, I propose closure of Recommendation 93–2.

To continue successful implementation of Recommendation 93–2 and implement Recommendation 97–2 in an integrated fashion, the Department is taking steps to ensure stable funding for these important crosscutting safety activities now and in the outyears. We have established a responsible line manager and identified necessary funding for fiscal years 1998 and 1999.

The Implementation Plan was prepared by a cross-organizational response team reporting to the Assistant Secretary for Defense Programs in coordination with other affected Headquarters and Field offices. Dr. Robin Staffin, Deputy Assistant Secretary for Research and Development, Office of Defense Programs, will be the responsible manager for implementing this plan. He can be reached at (202) 586–7590.

Sincerely,

Federico Peña.

[FR Doc. 97–34196 Filed 12–31–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

Name: Environmental Management Advisory Board.

Date and Times: Wednesday, January 21, 1998, 8:30 a.m.—3:00 p.m.

Place: U.S. Department of Energy/ Forrestal Building, 1000 Independence Avenue, S.W.; Room 1E–245, Washington, D.C. 20585, (202) 586–4400.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Special Assistant to the Assistant Secretary for Environmental Management; Environmental Management Advisory Board (EMAB), EM–22, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–4400. The Internet address is: James.Melillo@em.doe.gov

SUPPLEMENTARY INFORMATION: Purpose of the Board. The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management program, from the perspectives of affected groups and state, local, and tribal governments. The Board will help to improve the Environmental Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous publics with opportunities to express their opinions regarding the Environmental Management Program.

Tentative Agenda

Wednesday, January 21, 1998

8:30 a.m. Co-Chairmen Open Public Meeting
8:45 a.m. Opening Remarks, Assistant Secretary for Environmental Management
9:00 a.m. Technology Development and Transfer Committee Report
9:30 a.m. Privatization Committee Report
10:00 a.m. Science Committee Report
10:45 a.m. 2006 Strategic Planning Committee Report
11:15 a.m. Long-Term Stewardship Committee Report
11:45 a.m. Worker Health and Safety Committee Report
12:00 p.m. Lunch
1:00 p.m. Board Business
2:15 p.m. Public Comment Session
3:00 p.m. Meeting Adjourns

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should either contact James T. Melillo at the address or telephone number listed above, or call 1–(800) 736–3282, the Center for Environmental Management Information and register to speak during the public comment session of the meeting. Individuals may also register on January 21, 1998 at the meeting site. Every effort will be made to hear all those wishing to speak to the Board, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Board Co-Chairs are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes

A meeting transcript and minutes will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on December 23, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–34195 Filed 12–31–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–149–000]

El Paso Natural Gas Company; Notice of Application

December 24, 1997.

Take notice that on December 19, 1997, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP98–149–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convience and necessity to construct and operate the Bondad Expansion Project to alleviate a capacity constraint on El Paso's system north of the Blanco plant in San Juan County, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that it proposes to construct and operate additional compression facilities, with appurtenances, at the existing Bondad compressor station located on the Ignacio to Blanco Line and Loop Line (Line Nos. 1205 and 1218, respectively) (Ignacio Lines), in La Plata County, Colorado, in order to restage the three existing Solar Centaur centrifugal compressor units and to replace each of the three gas turbine engines comprising

10,740 (ISO) horsepower with three gas turbine engines comprising 15,900 (ISO) horsepower.

El Paso contends that the Bondad Expansion Project has been designed to permit El Paso to transport 116,500 Mcf per day of additional quantities of gas from receipt points along the Ignacio Lines to an existing point near the existing Blanco plant located in San Juan County, New Mexico.

El Paso estimates the cost of constructing the Bondad Expansion Project to be $3.6 million. El Paso proposes to place the proposed facilities in service by October 1, 1998.

It is stated that based on the cost of the proposed compression facilities, El Paso has calculated a separate incremental rate attributable to the cost of service for the proposed Bondad Expansion Project. It is stated that the incremental reservation rate for the proposed project, which is referred to as the Bondad Facilities Reservation Charge, is $0.67734 per dth, on a monthly basis. El Paso proposes the calculated incremental rate (the recourse rate) as the tariff rate applicable to firm transportation service on the Bondad Expansion Project.

In addition, it is stated that El Paso has calculated a separate incremental fuel charge, referred to as the Bondad Facilities Fuel Charge, in which shippers receiving firm service on the Bondad Expansion Project will be assessed a proposed incremental fuel charge of 0.75 percent of quantities of gas transported.

El Paso states that in support of the Bondad Expansion Project, it has entered into final, firm Transportation Service Agreements (TSAs) with Enron Capital & Trade Resources Corp., Elm Ridge Resources, Inc. and Conoco, Inc., for the transportation of an additional 116,500 mcf per day of gas from any point of receipt on the Bondad System, including the Ignacio Receipt Point, to the Blanco Delivery Pont.

El Paso states that the executed firm TSAs applicable at the Bondad Expansion Project are subject to the provisions of Rate Schedule FT–1 contained in El Paso's Volume No. 1–A, FERC Gas Tariff; however, pursuant to Section 4.5 of the Tariff, the executed TSAs each contain a separate negotiated rate, rather than the proposed tariff rate, applicable to the Bondad Expansion Project. El Paso further states that the rate negotiated with each of the three shippers on the Project is a Total Daily One-Part Rate per dth.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before January 14, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests or the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervene status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–34175 Filed 12–31–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP90–1512–001]

Mountain Fuel Supply Company; Notice of Petition To Amend

December 24, 1997.

Take notice that on December 19, 1997, Mountain Fuel Supply Company (Mountain Fuel), 180 East First South Street, Salt Lake City, Utah 84145, filed in Docket No. CP90–1512–001 a petition pursuant to Section 7(f) of the Natural Gas Act to amend its certificate issued in Docket No. CP90–1512, authorizing a service area determination, all as more fully set forth in the petition on file with the Commission and open to public inspection.

Mountain Fuel proposes to modify its service area by adding Box Elder, Weber Davis, Salt Lake, Tooele and Utah Counties, all located in Utah, and the remainder of Cache County, Utah, that is not part of Mountain Fuel's existing service area. It is stated that the service area presently consists of Franklin County, Idaho, and most of Cache County, Utah. It is explained that the additional counties are located along the Wasatch Front of northern Utah and incorporate the Sunset, Porter's Lane (Centerville), Little Mountain and Payson gate-station interconnects with Questar Pipeline Company (Questar), an interstate pipeline company, and the Hunter Park interconnect with Kern River Gas Transmission Company, an interstate pipeline company.

Mountain Fuel asserts that the additions to the service area are required to improve its operating flexibility for meeting customer requirements in its northern Utah and

southern Idaho distribution area. It is stated that Mountain Fuel has recently experienced operational problems because of declines in the Btu content of gas received from Questar at its Hyrum Gate Station, which has been the only source of gas serving customers in the existing service area. It is explained that Mountain Fuel requires additional supply sources for gas with higher Btu content to provide reliable service to its customers.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 5, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 97–34173 Filed 12–31–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–144–000]

Natural Gas Pipeline Company of America; Notice of Request Under Blanket Authorization

December 24, 1997.

Take notice that on December 18, 1997, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP98–144–000 a request pursuant to Sections 157.205 and 157.212(a) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212(a)) seeking NGA Section 7(c) certification to retain and operate an existing 3-inch tap and dual 2-inch meter originally authorized under NGPA Section 311 to deliver gas to Land O'Lakes, Inc. in Beaver County, Oklahoma, under the blanket certificate issued in Docket No. CP82–402–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural states that it seeks NGA certification in order that it may be used to provide Part 284 Subpart G transportation. Natural's proposed quantities to be delivered at the existing point of delivery are 1,300 MMBtu/day. Natural states that the end use of gas is for Land O'Lakes, Inc. Natural states that it can provide the quantities of natural gas without detriment or disadvantage to its peak day and annual delivery capacity. Natural notes that the total volume of gas to be delivered after the facilities are certificated will not exceed the total volume originally capable of being delivered. Natural states that the facilities were placed in-service on November 2, 1997. Natural contends that it is currently providing interruptible transportation service by means of the subject facilities under Rate Schedule ITS.

Natural asserts that it obtained the appropriate environmental clearances from the Oklahoma Historical Society, the United States Department of Interior Fish and Wildlife Service, the Oklahoma Archaeological Survey, and the Department of the Army Corps of Engineers for its proposed construction.

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 authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–34174 Filed 12–31–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–21–000, et al.]

Alabama Power Company, et al.; Electric Rate and Corporate Regulation Filings

December 23, 1997.

Take notice that the following filings have been made with the Commission:

1. Alabama Power Company

[Docket No. EC98–21–000]

Take notice that on December 4, 1997, Alabama Power Company (Alabama Power), filed an application, pursuant to Section 203 of the Federal Power Act, for approval of the sale of a 44kV transmission substation to the City of Hartford, Alabama (City). The facilities are located in the City of Hartford, Geneva County, Alabama. The total purchase price of the facilities to be sold and conveyed is $221,668.00.

Comment date: January 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. GPU Power, Inc.

[Docket No. EG98–20–000]

Take notice that on December 12, 1997, GPU Power, Inc. (GPU Power or Applicant), of One Upper Pond Road, Parsippany, New Jersey 07054, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that, through its wholly-owned subsidiary, GPU Power Ireland, Inc., it intends to develop a base load peat-fired power plant to be located in East Midlands, Ireland (the Facility). Applicant further states that all electricity produced by the Facility will be sold at wholesale to Electricity Supply Board, a statutory corporation with principal offices at 27 Lower Fitzwilliam Street, Dublin 2, Ireland.

Comment date: January 16, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Zhejiang Yong-Ke Thermal Power Corporation, Ltd.

[Docket No. EG98–21–000]

On December 15, 1997, Zhejiang Yong-Ke Thermal Power Corporation Ltd. (ZY), by EDC Shaoxing Power Ltd., c/o Enserch Development Corp., 1817 Wood Street, Dallas TX 75201, filed

with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

ZY will own a 36 MW coal-fired, cogeneration plant (the Facility) now under construction in the Keqiao Western Industrial Area, Shaoxing County, Zhejiang Province, PRC. The Facility will generate and sell electric power at wholesale to the local utility (the Shaoxing Administration of Power Utilization, as subsidized by the 3-Electricity Office of Shaoxing County People's Government), and will sell thermal energy to local businesses in the Keqiao Western Industrial Area.

Comment date: January 14, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Florida Power & Light Company

[Docket No. EL98–8–000]

Take notice that on December 15, 1997, Florida Power & Light Company tendered for filing a Supplemental Statement on Reciprocity in the above-referenced docket.

Comment date: January 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. The Wisconsin Public Power Inc. System v. Wisconsin Power and Light Company

[Docket No. EL98–11–000]

Take notice that on December 2, 1997, The Wisconsin Public Power Inc. SYSTEM (WPPI), filed a complaint under Section 206 of the Federal Power Act against Wisconsin Power and Light Company (WPL). In the complaint, WPPI alleges that WPL denied firm transmission service to WPPI because WPL has reserved its entire share of firm interface capacity on the Western Interface for its own company including 200 MW for its possible future load growth needs. The complaint alleges that WPL has engaged in a systematic tariff violation, a violation of transmission service comparability, a breach of contract and an anticompetitive withholding of available transfer capacity from the market.

A copy of the complaint was served on respondent WPL and the Public Service Commission of Wisconsin.

Comment date: January 22, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before January 22, 1998.

6. Enron Power Marketing, Inc. v. Pennsylvania-New Jersey-Maryland Interconnection and PECO Energy Company

[Docket No. EL98–12–000]

Take notice that on December 15, 1997, Enron Power Marketing, Inc. (EMPI), filed a complaint and request for expedited relief under Section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e (1997). EPMI seeks an order immediately directing the Pennsylvania-New-Jersey Maryland Interconnection (PJM) and, if necessary, PECO Energy Company (PECO) to enter into transmission agreements with EPMI, as required for the provision of network integration transmission service, so that EPMI can serve its wholesale customer, the National Railroad Passenger Corporation (Amtrak). EPMI alleges that PJM has violated the FPA and its open-access transmission tariff by denying network service to EPMI, and eligible customer. EPMI alleges that PECO likewise has threatened to violate the FPA, its open-access tariff and Order No. 888 by denying EPMI access to interconnection facilities required to provide transmission service to Amtrak. EPMI requests that the Commission grant relief on an expedited basis, and no later than March 31, 1998, so that EPMI can satisfy the requirements of the contract to provide electric service to Amtrak.

Comment date: January 22, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before January 22, 1998.

7. Bangor Hydro-Electric Company, Cambridge Electric Light Company, Central Maine Power Company, Central Vermont Service Corporation, The Connecticut Light and Power Company, Maine Public Service Company, Montaup Electric Company, New England Power Company, Public Service Company of New Hampshire, and Western Massachusetts Electric Company, Complainants and Petitioners, v. Ashburnham Municipal Light Department, Boylston Municipal Light Department, Braintree Electric Light Department, Chicopee Municipal Lighting Plant, Connecticut Municipal Electric Cooperative, Danvers Electric Division, Eastern Maine Electric Cooperative, Inc., Georgetown Municipal Light Department, Hingham Municipal Light Plant, City of Holyoke Gas & Electric Department, Houlton Water Company, Hudson Light & Power Department, Hull Municipal Lighting Plant, Ipswich Municipal Light Department, Littleton Electric Light & Water Department, Marblehead Municipal Light Department, Middleborough Gas & Electric Department, Middleton Municipal Light Department, New Hampshire Electric Cooperative, Inc., North Attleborough Electric Department, Paxton Municipal Light Department, Peabody Municipal Light Plant, Shrewsbury's Electric Light Plant, Sterling Municipal Light Department, Taunton Municipal Lighting Plant, Templeton Municipal Light Plant, Wakefield Municipal Light Department, West Boylston Municipal Lighting Plant, Westfield Gas & Electric Light Department, and Wolfeboro Municipal Electric Dept.; Respondents

[Docket No. EL98–13–000]

Take notice that on December 15, 1997, Bangor Hydro-Electric Company, Cambridge Electric Light Company, Central Maine Power Company, Central Vermont Service Corporation, The Connecticut Light and Power Company, Maine Public Service Company, Montaup Electric Company, New England Power Company, Public Service Company of New Hampshire, and Western Massachusetts Electric Company (Sponsors) tendered for filing a Complaint and Petition for Investigation, Contract Modification, and Declaratory Order against Ashburnham Municipal Light Department, Boylston Municipal Light Department, Braintree Electric Light Department, Chicopee Municipal Lighting Plant, Connecticut Municipal Electric Energy Cooperative, Danvers Electric Division, Eastern Maine Electric Cooperative, Inc., Georgetown Municipal Light Department, Hingham

Municipal Light Plant, City of Holyoke Gas & Electric Department, Houlton Water Company, Hudson Light & Power Department, Hull Municipal Lighting Plant, Ipswich Municipal Light Department, Littleton Electric Light & Water Department, Marblehead Municipal Light Department, Middleborough Gas & Electric Department, Middleton Municipal Light Department, New Hampshire Electric Cooperative, Inc., North Attleborough Electric Department, Paxton Municipal Light Department, Peabody Municipal Light Plant, Shrewsbury Electric Light Plant, Sterling Municipal Light Department, Taunton Municipal Lighting Plant, Templeton Municipal Light Plant, Wakefield Municipal Light Department, West Boylston Municipal Lighting Plant, Westfield Gas & Electric Light Department, and Wolfeboro Municipal Electric (Purchasers) arising under Purchase Contracts between the Sponsors and the Purchasers.

The Purchase Contracts pertain to the purchase and sale of power and energy from the nuclear steam generating plant owned by Maine Yankee Atomic Power Company, which plant has been shut down. Sponsors seek an order from the Commission declaring that the Purchasers remain responsible for payments due under the Purchase Contracts and directing Purchasers to make such payments. Sponsors also seek a modification of the Purchase Contracts to extend the termination date or otherwise to ensure that Sponsors may fully recover from Purchasers a share of the costs of shutting down and decommissioning the Maine Yankee nuclear steam generating plant that is proportionate to the Purchasers' entitlements to energy from the plant.

Comment date: January 22, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before January 22, 1998.

8. Public Advocate, State of Maine v. Maine Yankee Atomic Power Company

[Docket No. EL98–14–000]

Take notice that on December 15, 1997, Public Advocate State of Maine tendered for filing a complaint as to the justness, unreasonableness and unlawfulness of charges, rates and contracts collected by Maine Yankee Atomic Power Company.

Comment date: January 22, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before January 22, 1998.

9. Western Systems Power Pool

[Docket No. ER91–195–030]

Take notice that on December 9, 1997, the Western Systems Power Pool (WSPP), filed certain information to update its October 30, 1997, quarterly filing. This data is required by Ordering Paragraph (D) of the Commission's June 27, 1991, Order (55 FERC ¶ 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992, Order On Rehearing Denying Request Not To Submit Information, And Granting In Part And Denying In Part Privileged Treatment. Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992, order. Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

10. Niagara Mohawk Power Corp.

[Docket No. ER97–4568–001]

Take notice that on December 5, 1997, Niagara Mohawk Power Corporation made a filing in compliance with the Commission's Order issued in this docket on November 7, 1997.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PECO Energy Company

[Docket No. ER98–841–000]

Take notice that on November 28, 1997, PECO Energy Company (PECO), filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Wheeled Electric Power Company (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER98–842–000]

Take notice that on November 28, 1997, PECO Energy Company (PECO) filed an executed Installed Capacity Obligation Allocation Agreement between PECO and DTE-CoEnergy L.L.C. (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER98–843–000]

Take notice that on November 28 1997, PECO Energy Company (PECO), filed an executed Transmission Agency Agreement between PECO and DTE-CoEnergy L.L.C., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER98–844–000]

Take notice that on November 28, 1997, PECO Energy Company (PECO), filed an executed Transmission Agency Agreement between PECO and American Energy Solutions (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission

Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER98–845–000]

Take notice that on November 28, 1997, PECO Energy Company (PECO), filed an executed Installed Capacity Obligation Allocation Agreement between PECO and American Energy Solutions (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER98–846–000]

Take notice that on November 28, 1997, PECO Energy Company (PECO), filed an executed Transmission Agency Agreement between PECO and Wheeled Electric Power Company (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER98–847–000]

Take notice that on November 28, 1997, Cinergy Services, Inc. (Cinergy), on behalf of its Operating Companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., tendered for filing an unexecuted Service Agreement for service under Cinergy's Power Sales Tariff applicable to customers which Cinergy does not currently have existing authority to make sales at market based rates.

Cinergy requests an effective date thirty (30) days prior to the date of filing, consistent with the Commission's November 15, 1996, Order in ER96–2506–000, 77 FERC ¶ 61,172 (1996).

Copies of the filing were served upon all parties listed in Attachment A of the Service Agreement as well as the State Commissions of Alabama, Colorado, Connecticut, District of Columbia, Kentucky, Illinois, Indiana, Iowa, Kansas, Florida, Georgia, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington and Wisconsin.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric and Power Company

[Docket No. ER98–848–000]

Take notice that on November 28, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with Progress Power Marketing, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon Progress Power Marketing, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Virginia Electric and Power Company

[Docket No. ER98–849–000]

Take notice that on November 28, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with Sonat Power Marketing L.P., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. This agreement supersedes the non-firm agreement accepted for filing January 8, 1997, in Docket No. ER97–681–000. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon Sonat Power Marketing L.P., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Southern California Edison Company

[Docket No. ER98–850–000]

Take notice that on November 28, 1997, Southern California Edison Company, tendered for filing revisions to firm transmission service rates between Edison and the City of Riverside (Riverside), Rate Schedule FERC Nos. 250.6, 250.8, 250.10, 250.15, 250.21, 250.27, and 250.30.

Edison is requesting waiver of the Commission's 60 day notice requirements and is requesting an effective date of December 1, 1997.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Niagara Mohawk Power Corporation

[Docket No. ER98–851–000]

Take notice that on November 28, 1997, Niagara Mohawk Power Corporation (Niagara Mohawk), filed Service Agreements for transmission and wholesale requirements services in conjunction with an electric retail access pilot program that was established by the New York Public Service Commission effective November 1, 1997. The Service Agreements for transmission services are under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 3; Niagara Mohawk's customers are National Fuel Resources, Advantage Energy, Inc., New Energy Ventures—East, Agway Energy Services, Wheeled Electric Power Company, Plum Street Energy Marketing, Inc., and North American Energy Conservation, Inc. The Service Agreements for wholesale

requirements services are under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 4; Niagara Mohawk's customers are National Fuel Resources, Advantage Energy, Inc., New Energy Ventures—East, Agway Energy Services, Wheeled Electric Power Company, Plum Street Energy Marketing, Inc., and North American Energy Conservation, Inc. The Service Agreements have been modified by an order of the Commission in this proceeding dated November 7, 1997. Revised Service Agreements will be filed once the Commission has accepted Niagara Mohawk's compliance filing.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. The Washington Water Power Company

[Docket No. ER98–852–000]

Take notice that on December 1, 1997, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission an executed Confirmation Letter for interruptible firm transmission service between WWP and Avista Energy, Inc. WWP requests that service under the Confirmation Letter be given an effective date of November 1, 1997.

Copies of this filing were provided to the Idaho Public Utilities Commission and the Washington Utilities and Transportation Commission.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Entergy Services, Inc.

[Docket No. ER98–853–000]

Take notice that on December 1, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and MidAmerican Energy Company.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Entergy Services, Inc.

[Docket No. ER98–854–000]

Take notice that on December 1, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and MidAmerican Energy Company.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Wisconsin Electric Power Company

[Docket No. ER98–855–000]

Take notice that on December 1, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an original Market Rate Sales and Resale Transmission Tariff, forms of Service Agreement and Service Specifications, and Code of Conduct. The tariff provides for the sale of energy and capacity at market rates and for the resale of transmission rights. Wisconsin Electric respectfully requests waiver of any regulations that may be required to permit this tariff to become effective on January 31, 1998, sixty days from the date of filing.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Tucson Electric Power Company

[Docket No. ER98–856–000]

Take notice that on December 1, 1997, Tucson Electric Power Company (TEP), tendered for filing the following service agreements for firm point-to-point transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requests waiver of notice to permit the service agreements to become effective as of the earliest date service commenced under the agreements. The details of the service agreement are as follows:

1. Service Agreement for Firm Point-to-Point Transmission Service with Tucson Electric Power Company, Contracts & Wholesale Marketing dated November 16, 1997. Service under this agreement commenced on November 1, 1997.

2. Service Agreement for Firm Point-to-Point Transmission Service with Tucson Electric Power Company, Contracts & Wholesale Marketing dated November 14, 1997. Service under this agreement commenced on November 1, 1997.

3. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc. dated November 7, 1997. Service under this agreement commenced on November 7, 1997.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company

[Docket No. ER98–857–000]

Take notice that on December 1, 1997, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO), and Southwestern Electric Power Company (SWEPCO), (collectively, the CSW Operating Companies), submitted for filing a service agreement under which the CSW Operating Companies will provide point-to-point transmission services to SWEPCO in accordance with the CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies state that the filing has been served on SWEPCO and on the Public Utility Commission of Texas.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Montaup Electric Company

[Docket No. ER98–861–000]

Take notice that on November 25, 1997, Montaup Electric Company (Montaup), filed revisions to its open access transmission tariff providing for inclusion in the formula rate of support payments made by Montaup to other New England Power Pool Participants for support of those utilities' Pool Transmission Facilities. Montaup requests that these tariff revisions be allowed to become effective on January 26, 1998.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Northeast Utilities Service

[Docket No. ER98–862–000]

Take notice that Northeast Utilities Service Company (NUSCO), on November 28, 1997, tendered for filing, changes to transmission rates under the Northeast Utilities System Companies Open Access Transmission Service Tariff No. 9.

NUSCO states that the rates and charges reflect the removal of generator leads from transmission plant for ratemaking purposes and result in an overall rate decrease for transmission service.

NUSCO requests that the rate changes become effective on February 1, 1998.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–34176 Filed 12–31–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–22–000, et al.]

El Segundo Power, LLC, et al.; Electric Rate and Corporate Regulation Filings

December 24, 1997.

Take notice that the following filings have been made with the Commission:

1. El Segundo Power, LLC

[Docket No. EG98–22–000]

Take notice that on December 19, 1997, El Segundo Power, LLC, with its principal office at 1221 Nicollet Mall, Suite 700, Minneapolis, MN 55403, filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it is a limited liability company organized under the laws of the State of Delaware. Applicant will be engaged directly and exclusively in owning and operating an approximately 1020 MW gas-fired electric generating facility located at 301 Vista Del Mar Boulevard, El Segundo, CA 90245. Electric energy produced by the facility will be sold at wholesale to the Independent System Operator and into the California Power Exchange.

Comment date: January 15, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Tampa Electric Company

[Docket No. ER97–169–000]

Take notice that on December 12, 1997, Tampa Electric Company (Tampa Electric) filed a letter agreement with the Florida Municipal Power Agency (FMPA) that amends the letter of commitment between Tampa Electric and FMPA tendered previously in this docket.

Comment date: January 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Long Island Lighting Company; New York State Electric & Gas Corporation; Niagara Mohawk Power Corp.; Orange and Rockland Utilities, Inc.; Rochester Gas and Electric Corporation; New York Power Pool

[Docket Nos. ER97–1523–000, OA97–470–000, and ER97–4234–000 (Not Consolidated)]

Take notice that on December 19, 1997, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation (Member Systems) filed, pursuant to Section 205 of the Federal Power Act, revisions to the following documents filed on January 31, 1997, in the above-referenced proceedings as part of the restructuring of the New York Power Pool:

1. Independent System Operator Agreement and the Independent System Operator Tariff;

2. New York State Reliability Council Agreement;

3. Independent System Operator—New York State Reliability Council Agreement; and

4. Independent System Operator—Transmission Provider Agreement.

In addition, the Member Systems filed the New York Independent System Operator Filing Definitions Document, supporting information and affidavits.

The Member Systems state that the revised documents are being served on the parties to this proceeding and the New York State Public Service Commission, the Pennsylvania Public Utilities Commission and the New Jersey Board of Public Utilities.

Comment date: January 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Idaho Power Company

[Docket Nos. ER97–4021–000 and ER97–4023–000]

Take notice that on December 8, 1997, Idaho Power Company (IPC), tendered for filing an amended filing with regard to its Power Sale Agreement with Truckee-Donner Public Utility District and the Network Integration Transmission Agreement by Idaho Power on its Open-Access Transmission Tariff.

Comment date: January 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Millennium Energy Corporation

[Docket No. ER98–174–000]

Take notice that on December 11, 1997, Millennium Energy Corporation (Millennium Energy) tendered for filing an amendment and supplement to its application filed October 15, 1997, 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 on the date of the Commission's order accepting the Rate Schedule for filing.

Comment date: January 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Aurora Power Resources, Inc.

[Docket No. ER98–573–000]

Take notice that on December 11, 1997, Aurora Power Resources, Inc. (APRI), filed a supplement to its application for market-based rates as power marketer. The supplemental information pertains to ownership of APRI, business activities of the owners and a statement of non-affiliation of APRI with any other entity.

Comment date: January 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Central Illinois Public Service Company

[Docket No. ER98–858–000]

Take notice that on December 1, 1997, Central Illinois Public Service Company (CIPS), submitted one non-firm point-to-point service agreement and two umbrella short-term firm transmission service agreements, each dated November 21, 1997, establishing the following as customers under the terms of CIPS' Open Access Transmission Tariff, Tenaska Power Services Co., and Entergy Power Marketing Corp.

CIPS requests an effective date of November 21, 1997, for the service agreements. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were

served on the two customers and the Illinois Commerce Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER98–860–000]

Take notice that on November 26, 1997, Southern Company Services, Inc., acting on behalf of Gulf Power Company, filed an amended Service Agreement by and among itself, as agent for Gulf Power Company, Gulf Power Company and the Florida Public Utilities Company (FPUC), on behalf of its Marianna Division, pursuant to which Gulf Power Company will make wholesale power sales to FPUC for a term in excess of one (1) year.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. PP&L, Inc.

[Docket No. ER98–863–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L and QST Energy Trading Inc., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L and an alternative supplier participating in PP&L's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. PP&L, Inc.

[Docket No. ER98–864–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L and UGI Power Supply, Inc., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L and an alternative supplier participating in PP&L's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PP&L, Inc.

[Docket No. ER98–865–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L and Dupont Power Marketing, Inc., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L and an alternative supplier participating in PP&L's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. PP&L, Inc.

[Docket No. ER98–866–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L, UGI Utilities, Inc. (UGI), and West Penn Power Company d/b/a Allegheny Power (Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L, UGI and an alternative supplier participating in UGI's Retail Access Pilot Program.

Copies of the filing were served on UGI, the Supplier and the

Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. PP&L, Inc.

[Docket No. ER98–867–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L and Energis Resources, Incorporated (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L and an alternative supplier participating in PP&L's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. PP&L, Inc.

[Docket No. ER98–868–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L and Delmarva Power & Light Company (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L and an alternative supplier participating in PP&L's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. PP&L, Inc.

[Docket No. ER98–869–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L and NorAm Energy

Management, Inc., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L and an alternative supplier participating in PP&L's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. PP&L, Inc.

[Docket No. ER98–870–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L) filed an executed Transmission Agency Agreement between PP&L and Allegheny Energy Solutions, Inc., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L and an alternative supplier participating in PP&L's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. PP&L, Inc.

[Docket No. ER98–871–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L) filed an executed Transmission Agency Agreement between PP&L and GPU Advanced Resources, Inc., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L and an alternative supplier participating in PP&L's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. PP&L, Inc.

[Docket No. ER98–872–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L and Strategic Energy Partners Ltd., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L and an alternative supplier participating in PP&L's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. PP&L, Inc.

[Docket No. ER98–873–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L) filed an executed Transmission Agency Agreement between PP&L and New Energy Ventures, L.L.C., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L and an alternative supplier participating in PP&L's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. PP&L, Inc.

[Docket No. ER98–874–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L and DTE-CoEnergy, L.L.C., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L and an alternative supplier participating in PP&L's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. PP&L, Inc.

[Docket No. ER98–875–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L and Southern Energy Retail Trading and Marketing, Inc., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L and an alternative supplier participating in PP&L's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Southern Company Services, Inc.

[Docket No. ER98–876–000]

Take notice that on December 2, 1997, Alabama Power Company (APC), filed proposed changes to Rate Schedule REA–1 of FERC Electric Tariff, Original Volume No. 1, of Alabama Power

Company. The proposed changes will provide the affected customers a rate reduction. In addition, the filing proposes to revise Rate Schedule REA–1's provisions for terminating service at any given delivery point. APC has requested an effective date of January 1, 1997. The filing also contains corresponding Statements of Consent from the affected Customers.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. PP&L, Inc.

[Docket No. ER98–877–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L and CNG Retail Services Corporation (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L and an alternative supplier participating in PP&L's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. PP&L, Inc.

[Docket No. ER98–878–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L and Enron Power Marketing, Inc., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L and an alternative supplier participating in PP&L's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. PP&L, Inc.

[Docket No. ER98–879–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L, UGI Utilities, Inc. (UGI), and New Energy Partners, L.L.C., (Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L, UGI and an alternative supplier participating in UGI's Retail Access Pilot Program.

Copies of the filing were served on UGI, the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. PP&L, Inc.

[Docket No. ER98–880–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L, UGI Utilities, Inc. (UGI), and DTE Co Energy L.L.C., (Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L, UGI and an alternative supplier participating in UGI's Retail Access Pilot Program.

Copies of the filing were served on UGI, the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. PP&L, Inc.

[Docket No. ER98–881–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L, UGI Utilities, Inc. (UGI), and Allegheny Energy Solutions, Inc., (Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L, UGI and an alternative supplier participating in UGI's Retail Access Pilot Program.

Copies of the filing were served on UGI, the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. PP&L, Inc.

[Docket No. ER98–882–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L, UGI Utilities, Inc. (UGI), and Delmarva Power d/b/a Connectiv Energy (Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L, UGI and an alternative supplier participating in UGI's Retail Access Pilot Program.

Copies of the filing were served on UGI, the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. PP&L, Inc.

[Docket No. ER98–883–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L, UGI Utilities, Inc. (UGI) and UGI Power Supply, Inc., (Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket

No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L, UGI and an alternative supplier participating in UGI's Retail Access Pilot Program.

Copies of the filing were served on UGI, the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. PP&L, Inc.

[Docket No. ER98–884–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L and Horizon Energy Company (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L and an alternative supplier participating in PP&L's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. PP&L, Inc.

[Docket No. ER98–885–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L, UGI Utilities, Inc. (UGI), and Energis Resources Incorporated (Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L, UGI and an alternative supplier participating in UGI's Retail Access Pilot Program.

Copies of the filing were served on UGI, the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. PP&L, Inc.

[Docket No. ER98–888–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L, UGI Utilities, Inc. (UGI), and Horizon Energy (Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L, UGI and an alternative supplier participating in UGI's Retail Access Pilot Program.

Copies of the filing were served on UGI, the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. PP&L, Inc.

[Docket No. ER98–889–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L) filed an executed Transmission Agency Agreement between PP&L, UGI Utilities, Inc. (UGI), and CNG Retail Service Corporation (Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L, UGI and an alternative supplier participating in UGI's Retail Access Pilot Program.

Copies of the filing were served on UGI, the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. PP&L, Inc.

[Docket No. ER98–890–000]

Take notice that on December 1, 1997, PP&L, Inc. (PP&L), filed an executed Transmission Agency Agreement between PP&L, UGI Utilities, Inc. (UGI), and Strategic Energy Partners Ltd. (Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PP&L, UGI and an alternative supplier participating in UGI's Retail Access Pilot Program.

Copies of the filing were served on UGI, the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Cinergy Capital & Trading, Inc.

[Docket No. ER98–1063–000]

Take notice that on December 15, 1997, Cinergy Capital & Trading, Inc. (CC&T), filed an amendment to its Rate Schedule FERC No. 1. CC&T has requested a January 15, 1998, effective date for the amendment to Rate Schedule FERC No. 1.

Comment date: January 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. Consumers Energy Company

[Docket No. ER98–1117–000]

Take notice that on December 15, 1997, Consumers Energy Company (Consumers), filed Amendment No. 1, to its Power Sales Agreement with Edison Sault Electric Company.

Consumers has requested that this filing be accepted retroactive to January 1, 1997, to coincide with the proposed effective date of a concurrently filed settlement agreement of transmission agreement issues.

Copies of the filing were served upon Edison Sault Electric Company and the Michigan Public Service Commission.

Comment date: January 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–34172 Filed 12–31–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5458–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 15, 1997 Through December 19, 1997 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 the **Federal Register** dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–BLM–K67046–NV, Rating EC2, Olinghouse Mine Project, Construction of Two Open Pits, Waste Dump, Haul Road and Cyanide Heap Leach Pads, Plan-of-Operation, Carson City, Washoe County, NV.

Summary: EPA expressed environmental concerns that cyanide heap leach operations and overburden piles could adversely impact surface or groundwater, and recommended specific design modifications and mitigation.

ERP No. D–IBR–K64016–CA, Rating LO1, Hamilton City Pumping Plant, Fish Screen Improvement Project, COE Section 10 and 404 Permits, Central Valley, Butte, Colusa, Glenn and Tehama Counties, CA.

Summary: Because of the clear beneficial effects to endangered species. EPA concurred with the proposed project and strongly supported the Environmental Compliance and Mitigation Monitoring and Fish Protection and Evaluation and Monitoring Programs. EPA recommended that FEIS include a table which prioritizes action items if adequate resources are not received.

Final EISs

ERP No. F–BLM–K65196–CA, Interlakes Special Recreation Management Area Plan, Implementation, Federal and Private Lands Issues, Shasta County, CA.

Summary: EPA's concerns were adequately addressed in the final EIS. However, EPA recommended that the Record of Decision include the management plan implementation strategy.

ERP No. F–BLM–K67042–CA, Castle Mountain Mine Open Pit Heap Leach Gold Mine Expansion Project, Plan of Operations Modification and Mine and Reclamation Plans Amendment, Approvals, San Bernardino County, CA.

Summary: The Final EIS addressed most of EPA's concerns. EPA recommended that the Record of Decision include post-mining monitoring of pit conditions for public and environmental safety.

ERP No. F–FAA–K51036–HI, Kahului Airport Master Plan Improvements, Implementation, Funding and Approval of Permits, Kahului, Maui 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–K40205–CA, US 101 Realignment Construction, near Cushing Creek from Mile Post 20.3 to 22.3 South of Crescent City, Funding and COE Permits, Del Norte County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent the preparing agency.

ERP No. F–NPS–K61137–AZ, Organ Pipe Cactus National Monument General Management Plan and Development Concept Plan Implementation, Portion of the Sonoran Desert, Pima County, AZ.

Summary: Review of the final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FS–COE–C36030–NJ, Green Brook Sub-Basin Flood Control Plan, Updated Information concerning a Revised Recommended Plan and Mitigation Plan, Implementation, Middlesex, Union and Somerset Counties, NJ.

Summary: EPA recommended that the Record of Decision recognized that the Cornell-Dubilies Electronices site has been proposed for listing on the National Priorities List given potential PCB contamination in Bound Brook and New Market Pond. In addition, EPA recommended additional measures to minimize impacts to wetlands.

Dated: December 30, 1997.

Cliff Rader,

Environmental Protection Specialist, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–34226 Filed 12–31–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5487–6]

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 December 22, 1997 Through December 26, 1997

Pursuant to 40 CFR 1506.9.

EIS No. 970491, Draft EIS, NPS, CA, NV, NM, P140, Coaxial Cable Removal Project, Plan Approval and Permits Issuance, Socorro, New Mexico to Mojave, California, NM, CA and NV, Due: March 27, 1998, Contact: Joan DeGraff (303) 969–2464. The above DEIS was received on 12–19–97. Due to the Holiday Schedule, EISs received on 12–19–97 are appearing in the 1–02–98 **Federal Register** with Review and Wait Periods calculated from the 12–24–97 **Federal Register** date.

EIS No. 970492, Final EIS, FHW, NC, Fayetteville Outer Loop Project, US 401 to I–95 at the existing US 13 Interchange, Funding and US COE Section 10 and 404 Permit Issuance, City of Fayetteville, Cumberland County, NC, Due: January 22, 1998, Contact: Nicholas L. Graf (919) 856–4346.

The above FEIS was received on 12–19–97.

Due to the Holiday Schedule, EISs received on 12–19–97 are appearing in the 1–2–98 **Federal Register** with Review and Wait Periods calculated from the 12–24–97 **Federal Register** date.

EIS No. 970493, Draft EIS, AFS, CA, Payen, Pass Creek and English Range Allotments, Grazing Land Management Plan, Implementation, Tahoe National Forest, Sierraville Ranger District, Sierra and Nevada Counties, CA, Due: February 17, 1998, Contact: Jerry Sirski (916) 994–3401.

EIS No. 970494, Draft EIS, AFS, WA, White Pass Ski Area Expansion, Special-Use-Permit, Pigtail Basin and

Hogback Basin, Wenatchee and Gifford, Pinchot National Forests, Yakima and Lewis Counties, WA, Due: February 17, 1998, Contact: Jim Pena (509) 653–2205.

EIS No. 970495, Final EIS, FAA, MO, Lambert-St. Louis International Airport (Lambert) Improvements, Construction and Operation, Airport Layout Plan Approval, City of St. Louis, St. Louis County, MO, Due: February 02, 1998, Contact: Ms. Moira Keane (816) 426–4731.

EIS No. 970496, Draft EIS, FRC, ND, IA, MN, IL, lliance Natural Gas Pipeline Project, Construction and Operation, Funding, NPDES Permit, COE Section 10 and 404 Permit, ND, MN, IA and IL, Due: February 17, 1998, Contact: Paul McKee (202) 208–1088.

EIS No. 970497, Final EIS, URC, UT, Provo River Restoration Project (PRRP), Riverine Habitat Restoration, Reconstruction and Realignment of the existing Provo River Channel and Floodplain System between Jordanell Dam and Deer River Reservoir, Wasatch County, UT, Due: February 26, 1998, Contact: Mark A. Holden (801) 524–3146. The US Department of the Interior is a Joint Lead Agency for the above Project along with the Utah Reclamation Mitigation and Conservation Commission (URC).

Dated: December 30, 1998.

Cliff Rader,

Environmental Protection Specialist, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–34227 Filed 12–31–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5945–3]

Integrated Risk Information System (IRIS); Announcement of 1998 Program; Request for Information

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; Announcement of IRIS 1998 Program and request for scientific information on chronic health effects of chemical substances.

SUMMARY: The Integrated Risk Information System (IRIS) is a data base of the United States Environmental Protection Agency (EPA) that contains EPA scientific consensus positions on potential human health effects from environmental contaminants. On April 2, 1996 EPA announced the IRIS Pilot Program and solicited scientific information from the public for consideration in assessing the chronic health effects of eleven chemical substances. (See FR Vol. 61 No. 64 p. 14570.) The Pilot program is near completion, and the Agency is preparing a new set of chemical health assessments for IRIS. The purpose of this notice is to communicate to the public the Agency's plans, and solicit scientific data and evaluations for consideration in EPA's new assessments.

DATES: Please submit information in response to this notice by March 3, 1998.

ADDRESSES: Please send relevant scientific information to the IRIS Submission Desk in accordance with the instructions provided under "Submission of Information" in this notice.

FOR FURTHER INFORMATION CONTACT: For information on the IRIS program, contact Amy Mills, National Center for Environmental Assessment (mail code 8623), U.S. Environmental Protection Agency, 401 M St. SW, Washington, DC 20460, or call (202) 260–0569, or send electronic mail inquiries to mills.amy@epamail.epa.gov. For general questions about access to IRIS, the content of IRIS, or how to submit information in response to this notice, please call the Risk Information Hotline at (513) 569–7254. For scientific issues contact Terry Harvey, National Center for Environmental Assessment, 26 Martin Luther King Drive, Cincinnati, OH 45268, or call (513) 569–7531, or send electronic mail inquiries to harvey.terry@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Integrated Risk Information System (IRIS) is an EPA data base containing Agency consensus scientific positions on potential adverse human health effects that may result from chronic (or lifetime) exposure to environmental contaminants. IRIS currently provides health effects information on over 500 specific chemical substances.

IRIS contains chemical-specific summaries of qualitative and quantitative health information in support of the first two steps of the risk assessment process, i.e., hazard identification and dose-response evaluation. IRIS information includes the reference dose for non-cancer health effects resulting from oral exposure, the reference concentration for non-cancer health effects resulting from inhalation exposure, and the carcinogen assessment for both oral and inhalation exposure. Combined with specific situational exposure assessment information, the summary health hazard information in IRIS may be used as a source in evaluating potential public health risks from environmental contaminants.

The Pilot Program

As a consequence of analyzing the IRIS program and considering suggestions received about IRIS through 1995, the Agency tested some improvements through a Pilot Program. The Pilot focused on improving the scientific consensus and review process that precedes IRIS data base entries. EPA developed (or updated, for existing entries) non-cancer and cancer information for eleven Pilot substances. The Pilot process consisted of, (1) a call for technical information on the eleven substances from the public via a FR Notice, April 2, 1996, (2) a search of the current literature, (3) development of health assessments and draft IRIS summaries, (3) internal peer review (i.e., within EPA), (4) external peer review (i.e., outside EPA), (5) Agency consensus review and management approval within EPA, (6) preparation of final IRIS summaries and supporting documents, and (7) entry of summaries into the IRIS data base. The last stage is currently underway for most of the Pilot substances.

EPA's evaluation of the Pilot provided the basis for designing the operation of the future IRIS program. For example, the Agency standardized (1) the solicitation of scientific information from the public via a FR notice, (2) the use of the "Toxicological Review" as a preferred support document for IRIS entries which combines cancer and noncancer assessments, and (3) the use of rigorous external peer review procedures for IRIS summaries and Toxicological Reviews. The final Agency consensus review process, while still being tested, is replacing the former "CRAVE" and "RfD/RfC Work Groups".

The following substances were reviewed under the Pilot Program:

Name	CAS. No.
Arsenic	7440–38–2
Bentazon	25057–89–0
Beryllium	7440–41–7
Chlordane	12789–03–6
Chromium:	
Cr (III)	16065–83–1
Cr (VI)	18540–29–9
Total Cr	7440–47–3
Cumene	98–82–8
Methyl methacrylate	80–62–6
Diphenylmethane diisocyanate	101–68–8
Naphthalene	91–20–3
Tributyltin oxide	56–35–9

Name	CAS. No.
Vinyl chloride	75–01–4

A cancer assessment for polychlorinated biphenyls (PCBs) and an oral noncancer assessment for trinitrobenzene were also added to IRIS during the Pilot period. The IRIS summaries and support documents for the substances listed above are now provided on the IRIS web site at www.epa.gov/iris, or will be provided shortly. This publicly-available web site will be the primary location for all new IRIS summaries and Toxicological Reviews.

New Starts and Completions for FY 1998

EPA will continue building and updating the IRIS data base utilizing the experiences gained from the IRIS Pilot. The Agency recognizes that many of the assessments on IRIS need updating to incorporate new scientific information and methodologies. Further, many additional substances are candidates for adding to IRIS. However, due to limited resources in the Agency to address the spectrum of needs, a list of priority substances was developed internally by EPA for attention in FY 1998. The following lists of substances are priorities for IRIS due to one or more of the following reasons: (1) Agency statutory, regulatory, or program implementation need; (2) new scientific information or methodology is available that might significantly change current IRIS information, (3) interest to other levels of government or the public, (4) most of the scientific assessment work has been completed while meeting other Agency requirements, and only a modest additional effort will be needed to complete the review and documentation for IRIS. Unless otherwise noted, noncancer and cancer endpoints will be assessed for each substance.

Assessments in Progress—Completion Planned for FY 1998

In addition to completing the remaining Pilot assessments, the following assessments are underway or generally complete, and are planned for update on IRIS in FY 1998:

Name	CAS No.
Acetonitrile	75–05–8
Barium	7440–39–3
Benzene	71–43–2
1,3-Butadiene	106–99–0
Cadmium	7440–43–9
Chloroethane	75–00–3
Diesel emissions	[N.A.]
Ethylene glycol butyl ether	111–76–2

Information requested on new assessments

The following IRIS health assessments have recently begun or will be started in FY 1998, with completion expected between late FY 1998 and early FY 2000. It is for these substances that the Agency is primarily requesting information from the public for consideration in the assessment.

Name	CAS No.
Boron	7440–42–8
Bromate	7758–01–2
Chloral hydrate	75–87–6
Chloroform	67–66–3
Dichloroacetic acid	79–43–6
1,3-Dichloropropene	542–75–6
Formaldehyde	50–00–0
Lindane	58–89–9
Nitrobenzene	98–95–3
Pentachlorophenol	87–86–5
Polychlorinated biphenyls (PCBs)—[noncancer endpoints]	1336–36–3
Styrene	100–42–5
Tetrachloroethylene	127–18–4
Tetrahydrofuran	109–99–9
Toxaphene	8001–35–2
Trichloroethylene	79–01–6
Vinyl acetate	108–05–4

Check the IRIS web site at www.epa.gov/iris for any additions to the above list during the course of FY 1998. Follow-up **Federal Register** notices will address new starts for subsequent fiscal years. In the future, these notices will include chemical substances selected for assessment or reassessment under EPA's new guidelines for carcinogen risk assessment that are also planned for inclusion in IRIS (See FR Vol. 61 no. 64 p. 32799, June 25, 1996).

Submission of Information

The IRIS program is providing an opportunity for public involvement on new assessments starting in FY 1998. While the Agency conducts a thorough literature search for each chemical substance, there may be other articles or unpublished studies we are not aware of. The Agency would greatly appreciate receiving scientific information from the public during the information gathering stage for the list of "new assessments" listed above. Interested persons should provide scientific comments, analyses, studies, and other pertinent scientific information. The most useful documents for EPA are unpublished studies or other primary technical sources that we may not otherwise obtain through open literature searches. Also note that if you have submitted certain information previously then there is no need to resubmit that information. Information from the public is being solicited for 60 days via this notice.

Similar to the process described in the FR Notice for the IRIS Pilot, submissions will be handled in a three-step process:

1. First, interested parties should simply provide a list (submission inventory), briefly identifying all the information they wish to submit to the IRIS Submission Desk. The list should specify by name and CAS (Chemical Abstract Registry) number the chemical substance(s) to which the information pertains, state the type of assessment that is being addressed (e.g., carcinogenicity), and describe briefly the information being submitted for consideration. Where possible, documents should be listed in scientific citation format, that is, author(s), title, journal, and date. A cover letter should state that the correspondence is an IRIS Submission, describe in general terms the purpose of the submission, and include names, addresses, and telephone numbers of persons to contact for additional information on the submission. Three copies of the submittal should be mailed to the IRIS Submission Desk, NCEA (MS–105), U.S. Environmental Protection Agency, 26 Martin Luther King Drive, Cincinnati, OH 45268.

The submission inventory and cover letter may instead be submitted electronically to IRIS.comments@epamail.epa.gov. Electronic information must be submitted in Wordperfect or as an ASCII file. Information will also be accepted on 3.5" floppy disks. All information in electronic form must be identified as an IRIS Submission.

2. In the second step, EPA will compare the submission inventory to existing files and identify the information that should be submitted. This step will help prevent an influx of duplicative information. The submitter will receive notification requesting full submission of the selected material.

3. In the third step, the submitter must send in the information requested by EPA within 30 days to ensure its consideration in the assessment. Submittals should include a cover letter addressing all of the points in item 1 above. In addition, persons submitting results of new health effects studies concerning existing substances on IRIS should include a specific explanation of how and why the study results could change the information in IRIS.

Submitters are requested to send three copies, at least one of which should be unbound. The submittal should be mailed to the IRIS Submission Desk, NCEA (MS–105), U.S. Environmental Protection Agency, 26 Martin Luther King Drive, Cincinnati, OH 45268. Receipt of information will be acknowledged by the IRIS Submission Desk.

Confidential Business Information (CBI) should not be submitted to the IRIS Submission Desk. CBI must be submitted to the appropriate EPA Office via approved Agency procedures for submission of CBI as codified in the Code of Federal Regulations (40 CFR, Part 2, Subpart B). If a submitter believes that a CBI submission contains information with implications for IRIS, it should be noted in the cover letter accompanying the submission to the appropriate office.

Submitters may also request to augment their submission with a scientific briefing to EPA staff. Such requests should be made directly to Amy Mills, acting IRIS Assessment Manager (see **ADDRESSEES**).

Dated: December 24, 1997.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 97–34198 Filed 12–31–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5943–1]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory for CSI Iron and Steel Sector and Petroleum Refining Sector Subcommittee Meetings; Open Meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Iron and Steel Sector and Petroleum Refining Sector Subcommittees of the CSIC will meet on the dates and times described below. Both meetings are open to the public. Seating at both meetings will be on a first-come basis and limited time will be provided for public comment. For further information concerning specific meetings, please contact the individuals listed with the announcements below.

(1) Iron and Steel Sector Subcommittee Meeting—January 21–22, 1998. The Iron and Steel Sector Subcommittee will hold an open meeting on Wednesday, January 21 and Thursday, January 22, 1998. On Wednesday, the meeting will begin at 10:00 a.m. CST and will run until 5:00 p.m. CST. Shortly after convening, the Subcommittee will break into work group sessions and reconvene in the afternoon. On Thursday, the meeting will begin at 8:00 a.m. CST and end at 4:00 p.m. CST. The Subcommittee will review the status of the two work groups it has created to deal with environmental performance and monitoring and decide its next steps. The meeting will be held both days at the Metcalf Federal Building, Great Lakes Conference Center, 12th floor, 77 West Jackson Blvd., Chicago, IL 60604.

At its October meeting, the Subcommittee decided to create two work groups: environmental performance and monitoring. The environmental performance work group is working on developing a code of conduct and a definition of substantial compliance for the industry, and the monitoring work group is exploring the different federal, state, and local monitoring requirements with a goal of considering if current monitoring of the industry is relevant to today's needs. At the January meeting, the Subcommittee will allow time on January 21st for the two work groups to meet in the morning and early afternoon, then review the progress of these two work groups and decide its next steps. Additionally, it will review the status of ongoing projects and discuss the development of papers dealing with industry-specific Resource Conservation and Recovery Act issues.

For more information about this meeting, please contact: Ms. Judith Hecht, Designated Federal Officer (DFO), at US EPA by telephone at 202–260–5682 in Washington, D.C. or by E-mail at hecht.judy@epamail.epa.gov, or Mr. Robert Tolpa at EPA Region 5 in Chicago, Illinois, on 312–886–6706, or Dr. Mahesh Podar at EPA, Washington, DC on 202–260–5387.

(2) Petroleum Refining Sector Subcommittee Meeting—January 26–27, 1998. The Petroleum Refining Sector Subcommittee will hold an open meeting on January 26 and 27, 1998. Work Group meetings will be held from 1:00 pm CST to 5:00 pm CST on Monday, January 26. The full Subcommittee will meet from approximately 8:00 am CST until 5:00 pm CST on Tuesday, January 27, 1998. The meeting will be held at the Harvey Hotel Dallas, 7800 Alpha Road, Dallas, Texas 75240. The hotel telephone number is 972–960–7000.

The Subcommittee meeting agenda includes an update on the status of the Refinery Air Information Reporting System Project and the Equipment Leaks Project. The Subcommittee also plans to discuss potential new project ideas. A public comment period has been scheduled from approximately 2:00 pm CST until 3:00 pm CST on Tuesday, January 27, 1998.

For further information concerning this meeting of the Petroleum Refining Sector Subcommittee, please contact either Craig Weeks, Designated Federal Officer (DFO), at US EPA Region 6 (6EN), 1445 Ross Avenue, Dallas, TX 75202–2733, by telephone at 214–665–7505 or E-mail at weeks.craig@epamail.epa.gov or Steve Souders, Alternate DFO, at US EPA (5306W), 401 M Street, SW, Washington, DC 20460, by telephone at 703–308–8431 or E-mail at souders.steve@epamail.epa.gov.

Inspection of Subcommittee Documents: Documents relating to the above topics will be publicly available at the meeting. Thereafter, these documents, together with the official minutes for the meetings, will be available for public inspection in room 2821M of EPA Headquarters, Common Sense Initiative Staff, 401 M Street, SW, Washington, D.C. 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically on our web site at http.//www.epa.gov/commonsense.

Dated: December 24, 1997.

Kathleen Bailey,

Designated Federal Officer.

[FR Doc. 97–34197 Filed 12–31–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

December 22, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the

Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 3, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW, Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0639.

Title: Implementation of Section 309(j) of the Communications Act, Competitive Bidding, PP Docket Number 93–253, First Report and Order.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for profit.

Number of Respondents: 400.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: N/A.

Total Annual Burden: 400 hours.

Needs and Uses: Section 3002 of the Balanced Budget Act of 1997 amended Section 309(j), to, in effect, reduce the situations in which the use of random selection is appropriate. While the Commission proposes to reduce the number of respondents, it does not reduce the burden hours required to complete an individual information collection. The Commission seeks comment on this proposal and other methods by which the burden on respondents may be reduced.

The Commission will use the information to determine whether the public interest would be served by granting a transfer of control or an assignment of a license awarded through lottery procedures. The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the burden estimates or any other aspect of the collection of information.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–34149 Filed 12–31–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 97–208; FCC 97–418]

Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide in-Region interLATA Services in South Carolina

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Memorandum Opinion and Order (Order) in CC Docket No. 97–208 concludes that BellSouth Corporation, *et al.* (BellSouth) has not satisfied the requirements of section 271(c)(1) of the Communications Act of 1934, as amended (Act). The Commission therefore denies, pursuant to section 271(d)(3), BellSouth's application to provide in-region interLATA services in South Carolina. The Order declines to grant BellSouth authority to provide in-region interLATA services in South Carolina.

EFFECTIVE DATE: December 24, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Pryor, Attorney, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted December 24, 1997, and released December 24, 1997. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., N.W., Room 239, Washington, D.C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc97–228.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis Of Order

1. On September 30, 1997, BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively, BellSouth) filed an application for authorization under section 271 of the Act, to provide in-region interLATA services in the State of South Carolina. In this Order, the Commission concludes that BellSouth may not obtain authorization to provide in-region, interLATA services in South Carolina pursuant to section 271(c)(1)(B) at this time because it has failed to meet its burden of demonstrating that it has received no qualifying requests for access and interconnection that, if implemented, would satisfy the requirements of section 271(c)(1)(A). The Commission further concludes that BellSouth has not yet demonstrated that it has fully implemented the competitive checklist in section 271(c)(2)(B). In particular, the Commission finds that BellSouth has not met its burden of showing that it meets the competitive checklist with respect to: (1) access to its operations support systems; (2) access to network elements; and (3) resale. The Commission concludes that BellSouth complies with the requirement to provide access to 911 and E911 services, and that BellSouth's inbound telemarketing script is consistent with the Act. The Commission therefore denies, pursuant to section 271(d)(3), BellSouth's application to provide in-region interLATA services in South Carolina.

2. *Compliance with Section 271(c)(1)(B).* The Commission concludes that BellSouth may not obtain authorization to provide in-region, interLATA services in South Carolina pursuant to section 271(c)(1)(B) at this time because it has failed to meet its burden of demonstrating that it has received no qualifying requests for access and interconnection that, if implemented, would satisfy the requirements of section 271(c)(1)(A). The Commission, as an initial matter, clarifies its standard for evaluating qualifying requests and the role of reasonable steps in its evaluation.

3. The Commission further concludes that MCI's provision of telephone exchange service on a test basis, at no charge, to the homes of nineteen MCI employees, does not qualify MCI as a competing provider under section 271(c)(1)(A), and therefore BellSouth has not satisfied the requirements of section 271(c)(1)(A).

4. *Compliance with the Competitive Checklist in Section 271(c)(2)(B).* For the

reasons set forth below, the Commission concludes that BellSouth has not yet demonstrated by a preponderance of the evidence that it has fully implemented the competitive checklist. As a preliminary matter, the Commission concludes that a BOC "generally offers" a checklist item if it makes the checklist item available as both a legal and a practical matter.

5. With respect to the first checklist item addressed, the Commission concludes, consistent with the Department of Justice's finding, that BellSouth has failed to demonstrate by a preponderance of the evidence that it provides nondiscriminatory access to all of the operations support systems (OSS) functions provided to competing carriers, as required by the competitive checklist. First, the Commission describes BellSouth's OSS. Second, the Commission outlines its general approach to analyzing the adequacy of a BOC's OSS. Third, the Commission analyzes the evidence concerning competing carriers' access to OSS functions for resale services and unbundled network elements. Based on the evidence in the record, the Commission concludes that BellSouth has not demonstrated that the access to certain OSS functions that it provides to competing carriers for pre-ordering, ordering, and provisioning of resale services and pre-ordering of unbundled network elements is equivalent to the access it provides to itself. Finally, in order to provide additional guidance, the Commission highlights a number of other OSS-related issues that are of concern to the Commission.

6. The next checklist item the Commission addresses is access to unbundled network elements. The Commission concludes that BellSouth does not meet this checklist item because it has not demonstrated by a preponderance of the evidence that it can make available, as a legal and practical matter, access to unbundled network elements in a manner that allows competing carriers to recombine them. The Commission concludes that the statement of generally available terms (SGAT) is deficient because it fails to include sufficiently detailed terms and conditions for access to network elements for the purposes of recombining them. The Commission finds that the SGAT lacks crucial details such as which elements will be separated and which will be provided in combination, and how and at what cost. The Commission concludes that, in particular, BellSouth has failed to demonstrate that it can provide access to such elements through the one method that it has identified for such access—collocation. The Commission finds that BellSouth fails to demonstrate that it offers or can timely provide collocation for the purposes of recombining unbundled network elements. The Commission finds it significant that BellSouth's SGAT does not commit to any provisioning intervals for implementing collocation requests. The Commission further finds that the record indicates that, in practice, it is taking BellSouth a long time to implement collocation requests. The Commission further finds that BellSouth has made no showing that there has been actual commercial usage or testing of collocation anywhere in its region for the purpose of recombining UNEs. Thus, the Commission concludes, BellSouth has not demonstrated that it can timely deliver unbundled network elements to collocation spaces for combining, or that the resulting provision of these combined elements will be at an acceptable level of quality.

7. The Commission also addresses the checklist item that requires incumbent LECs to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail, and not to prohibit, or to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service. The Commission concludes that BellSouth does not meet this checklist item because it refuses to offer contract service arrangements, which are contractual agreements made between a carrier and a specific, typically high-volume, customer, at a wholesale discount. The Commission concludes that BellSouth's argument that CSAs should not be further discounted because they have already been discounted from the tariff rate has been previously considered and rejected by the Commission. The Commission further finds that failure to offer CSAs to resellers at a discount impedes competition for large-volume customers and thus impairs use of resale as a vehicle for competitors to enter BellSouth's market.

8. The Commission also addresses the part of the checklist item that requires BellSouth to provide nondiscriminatory access to 911 and E911 services. The Commission concludes that BellSouth has made a *prima facie* case that it offers nondiscriminatory access to 911 and E911 services. Because no commenter has produced evidence to demonstrate that BellSouth is not currently offering nondiscriminatory access to 911 and E911 services, the Commission concludes that BellSouth satisfies this part of the checklist item.

9. *Compliance with Section 272.* The Commission concludes that BellSouth's inbound telemarketing script is consistent with the Act. The Commission concludes that a BOC, during an inbound telephone call, may recommend its own long distance affiliate, as long as it contemporaneously states that other carriers also provide long distance service and offers to read a list of all available interexchange carriers in random order.

10. *Public Interest.* Based on the Commission's conclusions that BellSouth has not fully implemented the competitive checklist, the Commission need not and does not address the issue of whether BellSouth has demonstrated that the authorization it seeks is consistent with the public interest, convenience, and necessity, as required by section 271(d)(3)(C).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–34144 Filed 12–31–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, January 6, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, January 8, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Audit: San Diego Host Committee/Sail to Victory '96 (continued from meeting of December 4, 1997).

Audit: Committee on Arrangements for the 1996 Republican National

Convention (continued from meeting of December 4, 1997).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer; Telephone: (202) 219–4155.

[FR Doc. 97–34232 Filed 12–30–97; 2:41pm]

BILLING CODE 6715–01–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. 1781 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.

Marianas Steamship Agencies, Inc., 1026 Cabras Highway, Administration Building Annex, Piti, Guam 96925.

Junichi Kinoshita, President

Clarence Tenorio, Vice President

Impex Cargo, Inc., 7661 NW 68 Street, Miami, FL 33166.

Officers:

Zamir Nader, President

Martha Claudia Garcia, Vice President

Dated: December 29, 1997.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–34188 Filed 12–31–97; 8:45 am]

BILLING CODE 6730–01–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 and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality.

Times and Dates: 9 a.m.–5 p.m., January 28, 1998; 9 a.m.–5 p.m., January 29, 1998.

Place: Room 303A, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Status: Open.

Purpose: The Subcommittee will conduct two workshops designed to gather information, stimulate dialogue, and identify issues on the topics of identifiability of data (January 28) and the use of registries (January 29). The context for the discussions will be the data needs of the health care system, the privacy of individuals, the Secretary's legislative recommendations on the confidentiality of individually-identifiable health information, and the current legislative efforts on health privacy.

On the first day the Subcommittee is interested in looking at how personal health information might be collected, stored, maintained, and disclosed for research, health care, quality assurance, cost containment, law enforcement, and other purposes so that individual identities might be protected. The goal is to look for ways to support important functions that rely on personal health information without unduly impinging on the privacy interests of individuals.

On the second day the Subcommittee is interested in exploring the purposes and function of health and medical registries in the U.S. and the extent to which they may pose or lessen threats to the privacy and confidentiality of individuals whose data is included in the registry. The goal is to identify the range or current activities that might qualify as registries and to put more information on the public record about the manner in which registries collect, maintain, and disclose personal health information. Workshop participants are expected to include a variety of invited public and private sector representatives whose expertise can contribute to addressing the workshop topics.

Contact Person for More Information: Substantive program information as well as a roster of committee members may be obtained from Judith Galloway, Division of Data Policy, 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. Additional information about the full Committee is available on the NCVHS website, where the tentative agenda for the Subcommittee meeting will also be posted when available: http://aspe.os.dhhs.gov/ncvhs.

Dated: December 24, 1997.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 97–34191 Filed 12–31–97; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Native Employment Works (NEW) Program Plan Guidance and Report Requirements.

OMB No.: New.

Description: The purpose of this document is to determine whether a Tribal plan is complete and will fulfill its intended purpose, goals and objectives to provide work activities. The plan will provide an outline of how the Tribe's program will be administered and operated and instructions for reporting program characteristics. It is also used to provide the public with information about the NEW program.

Respondents: States, Puerto Rico, Guam and the District of Columbia.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Program Plan	78	1	40	3,120
Operations Report	78	1	16	1,248

Estimated Total Annual Burden Hours: 4,368.

Additional Information: ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by February 17, 1998. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Acting Reports Clearance Officer, Bob Sargis at (202) 690–7275.

Comments and questions about the information collection described above should be directed, prior to the request date, to the Office of Information and

Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, (202) 395–7316.

Dated: December 22, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–34190 Filed 12–31–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegations of Authority

This Notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: K, Administration for Children and Families (62 FR 4295), as last amended, January 29, 1997; KA, the Office of the Assistant Secretary for Children and Families (62 FR 4295), as last amended, January 29, 1997; Chapter KL, the Office of Staff Development and Organizational Resources (OSDOR), (62 FR 4295), as last amended, January 29, 1997; Chapter KM, the Office of Planning, Research and Evaluation (OPRE), (62 FR 7787), as last amended, February 20, 1997; Chapter KN, the Office of Public Affairs (OPA), (60 FR 40586) as last amended, August 9, 1995; Chapter KP, the Office of Program Support (OPS), (62 FR 4295), as last amended, January 29, 1997; Chapter KS, Equal Employment Opportunities/Civil Rights and Special Initiatives Staff (EEO/CR&SI), (60 FR 58628), as last amended, November 28, 1995; Chapter KT, Office of Legislative Affairs and Budget (OLAB), (62 FR 4295), as last amended, January 29, 1997; Chapter KU, Office of Human Resource Management (OHRM), (62 FR 4295), as last amended, January 29, 1997; and Chapter KV, Office of Administrative Services and Facilities Management (OASFM), (62 FR 4295), as last amended, January 29, 1997. This realignment of staff offices will combine the fiscal and support functions under the purview of a newly created position of Deputy Assistant Secretary for Administration (formerly the Deputy Assistant Secretary for Program Operations) and establish the Office of Intergovernmental Affairs under the Office of the Deputy Assistant Secretary for Policy and External Affairs.

These Chapters are amended as follows:

I. Chapter K.10 Organization. Delete K.10 Organization in its entirety and replace with the following:

K.10 Organization. The Administration for Children and Families (ACF) is a principal operating division of the Department of Health and Human Services (DHHS). The Administration is headed by the Assistant Secretary for Children and Families, who reports directly to the Secretary. The Assistant Secretary also serves as the Director of Child Support Enforcement. In addition to the Assistant Secretary, the Administration consists of the Principal Deputy Assistant Secretary, the Deputy Assistant Secretary for Administration, the Deputy Assistant Secretary for Policy and External Affairs, and Staff and Program Offices. ACF is organized as follows:

- Office of the Assistant Secretary for Children and Families (KA)
- Office of the Deputy Assistant Secretary for Policy and External Affairs (KL)
- Office of the Deputy Assistant Secretary for Administration (KP)
- Administration on Children, Youth and Families (KB)
- Administration on Developmental Disabilities (KC)
- Regional Offices for Children and Families (KD 1–X)
- Administration for Native Americans (KE)
- Office of Child Support Enforcement (KF)—(which will remain as a separate organizational unit)
- Office of Community Services (KG)
- Office of Family Assistance (KH)
- Office of Regional Operations (KJ)
- Office of Planning, Research and Evaluation (KM)
- Office of Public Affairs (KN)
- Office of Refugee Resettlement (KR)
- Office of Legislative Affairs and Budget (KT)

II. Chapter KA, Office of the Assistant Secretary for Children and Families.

A. Amend KA.10 Organization. Delete Executive Secretariat Office (KAB).

B. Delete KA.20 Functions, Paragraph A, in its entirety and replace with the following:

KA.20 Functions. A. The Office of the Assistant Secretary is responsible to the Secretary for carrying out ACF's mission and provides executive supervision to the major components of ACF.

These responsibilities include providing executive leadership and direction to plan and coordinate ACF program activities to assure their effectiveness, approving instructions, policies, publications, and grant awards issued by ACF, and representing ACF in relationships with governmental and non-governmental organizations. The Assistant Secretary for Children and Families also serves as the Director of the Office of Child Support Enforcement, and signs official Child Support Enforcement documents as the Assistant Secretary for Children and Families. The Principal Deputy Assistant Secretary serves as alter ego to the Assistant Secretary on program matters and acts in the absence of the Assistant Secretary.

III. Delete Chapter KL, "The Office of Staff Development and Organizational Resources," retitle it as the "Office of the Assistant Secretary for Policy and External Affairs" and replace with the following:

Office of the Assistant Secretary for Policy and External Affairs

KL.00 Mission
KL.10 Organization
KL.20 Functions

KL.00 Mission. The Deputy Assistant Secretary for Policy and External Affairs serves as the principal advisor and counsel to the Assistant Secretary for Children and Families on all aspects of legislation, policy and intergovernmental affairs.

KL.10 Organization. The Deputy Assistant Secretary for Policy and External Affairs reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

- Office of the Deputy Assistant Secretary for Policy and External Affairs (KLA)
- Office of Intergovernmental Affairs (KLB)

KL.20 Functions A. The Office of the Deputy Assistant Secretary for Policy and External Affairs. The Deputy Assistant Secretary for Policy and External Affairs serves as the principal advisor and counsel to the Assistant Secretary for Children and Families on all aspects of legislation, policy, and intergovernmental affairs. The Deputy Assistant Secretary for Policy and External Affairs develops broad policy strategies and concepts pertaining to on-going and anticipated program issues and recommends legislation relevant to ACF programs. The Deputy Assistant Secretary for Policy and External Affairs represents the Assistant Secretary for Children and Families on intergovernmental matters, and in contacts and negotiations with Congressional members and staff and executives of agencies and

organizations. The Deputy Assistant Secretary for Policy and External Affairs provides executive leadership and direction to the Office of Legislative Affairs and Budget and Office of Intergovernmental Affairs.

B. The Office of Intergovernmental Affairs (OIA) serves as the focal point for intergovernmental coordination activities with other federal agencies, state and local officials, special interest groups, professional and business organizations, and private and voluntary groups. It tracks plans, proposals, legislative positions, conferences and other activities of outside groups that influence or affect ACF's programs and policies. It responds to requests for information from outside groups on ACF's programs and positions. It plans, organizes and coordinates conferences, workshops and other events to promote ACF's programs and priorities, and it coordinates ACF's participation at meetings and conferences sponsored by outside groups. It manages the speaker request system. It provides advance planning and preparation for trips by the Assistant Secretary, Principal Deputy Assistant Secretary, and Deputy Assistant Secretaries for ACF including speaking engagements. The Office serves as a focal point for ACF's international activities and provides policy advice and staff support to the Assistant Secretary for Children and Families on international issues concerned with human services; coordinates ACF's participation in special international initiatives; prepares or coordinates preparation of position papers for U.S. delegations to international organizations (e.g. United Nations (UN), UNICEF, Organization of American States (OAS), and the European Centre for Social Welfare Policy and Research); arranges professional development programs for foreign visitors; develops and manages international research and comparative studies; and manages international travel by ACF staff.

IV. Delete Chapter KM, "The Office of Planning, Research and Evaluation," in its entirety and replace with the following:

Office of Planning, Research and Evaluation

KM.00 Mission
KM.10 Organization
KM.20 Functions

KM.00 Mission. The Office of Planning, Research and Evaluation (OPRE) is the principal advisor to the Assistant Secretary for Children and Families on improving the effectiveness and efficiency of programs designed to make measurable improvements in the economic and social well-being of children and families.

The Office provides guidance, analysis, technical assistance, and oversight to ACF programs and across programs in the agency on: strategic planning aimed at measurable results; performance measurement; research and evaluation methodologies; demonstration testing and model development; statistical, policy and program analysis; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to improve the effectiveness of programs and service delivery. The Office is also responsible for the collection, compilation, analysis, and dissemination of data.

The Office oversees and manages the section 1110 and section 1115 social service research programs, including: priority setting and analysis; processing waivers for welfare reform demonstrations; managing and coordinating major cross-cutting, leading-edge studies and special initiatives; collaborating with states, communities, foundations, professional organizations and others to promote the development of children, family focused services, parental responsibility, employment, and economic independence; and providing coordination and leadership in implementing the Government Performance and Results Act (GPRA).

KM.10 Organization. The Office of Planning, Research and Evaluation is headed by a Director who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

- Office of the Director (KMA)
- Division of Economic Independence (KMB)
- Division of Child and Family Development (KMC)
- Division of Data Collection and Analysis (KMD)

KM.20 Functions. A. The Office of the Director provides direction and executive leadership to OPRE in administering its responsibilities. It serves as principal advisor to the Assistant Secretary for Children and Families on all matters pertaining to: improving the effectiveness and efficiency of ACF programs; strategic planning; performance measurement; program and policy evaluation; research and demonstrations; state and local innovations and progress; collection, analysis, and dissemination of data; and public/private partnership initiatives of concern to the Assistant Secretary for Children and Families. It represents the Assistant Secretary for Children and Families at various planning, research, evaluation and data collection and analysis forums and carries out special Departmental and Administration initiatives.

B. The Division of Economic Independence, in cooperation with ACF income support programs and others, works with Federal counterparts, states, community agencies, and the private sector to understand and overcome barriers to economic independence; promote parental responsibility; and assist in improving the effectiveness of programs that further economic independence.

The Division provides guidance, analysis, technical assistance and oversight in ACF on: strategic planning and performance measurement for economic independence; statistical, policy and program analysis; surveys, research, and evaluation methodologies; demonstration testing and model development; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to programs which promote employment, parental responsibility, and economic independence.

The Division analyzes, processes and coordinates Federal review and decision-making for all section 1115 state welfare reform waiver demonstration requests; develops policy-relevant priorities; conducts, manages and coordinates major cross-program, leading-edge research, demonstrations, and evaluation studies; manages and conducts statistical, policy and program analyses on trends in employment, child support payments, and other income supports; and works in partnership with states, communities, and the private sector to promote employment, parental responsibility, and family economic independence.

C. The Division of Child and Family Development, in cooperation with ACF programs and others, works with Federal counterparts, states, community agencies, and the private sector to: improve the effectiveness and efficiency of programs; assure the protection of children and other vulnerable populations; strengthen and promote family stability; and foster sound growth and development of children and their families.

The Division provides guidance, analysis, technical assistance and oversight in ACF on: Strategic planning and performance measurement for child and family development; statistical, policy and program analysis; surveys, research and evaluation methodologies; demonstration testing and model development; synthesis and

dissemination of research and demonstration findings; and application of emerging technologies to improve the effectiveness of programs and service delivery.

The Division: Manages the section 1110 social service research budget; develops policy-relevant priorities; conducts, manages and coordinates major cross-program, leading-edge research, demonstration, and evaluation studies; manages and conducts statistical, policy and program analyses on social trends and behaviors which impact child and family well-being; and works in partnership with states, local communities, and the private sector to promote the well-being of children and families.

D. The Division of Data Collection and Analysis is responsible for all aspects of the collection, compilation, analysis, and dissemination of data on selected ACF programs.

The Division develops regulations to implement data collection requirements; designs, develops, implements, and maintains systems for the collection and analysis of data including: Participation rate information, recipient characteristics, administrative data, State expenditures on families, work activities of non-custodial parents, transitional services, and data used in the assessment of State performance.

The Division provides leadership in and coordinates with other ACF and HHS offices and external organizations in the dissemination and use of these data for policy and research purposes. The Division also develops and maintains statistical protocols and manuals for data collection purposes and provides technical assistance in the use of these materials.

V. Delete Chapter KN, "The Office of Public Affairs," in its entirety and replace with the following:

Office of Public Affairs
KN.00 Mission
KN.10 Organization
KN.20 Functions

KN.00 Mission. The Office of Public Affairs (OPA) develops, directs and coordinates public affairs and communication services for ACF. It provides leadership, direction and oversight in promoting ACF's public affairs policies, programs and initiatives. The Office of Public Affairs also provides printing and distribution services for ACF.

KN.10 Organization. The Office of Public Affairs is headed by a Director who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

- Office of the Director (KNA)
- Division of Public Information (KNB)
- Division of Publications Services (KNC)

KN.20 Functions. A. Office of Director provides leadership and direction to OPA in administering its responsibilities. The Office provides direction and leadership in the areas of public relations policy and communications services. It serves as advisor to the Assistant Secretary for Children and Families in the areas of public affairs; provides advice on strategies and approaches to be used to improve public understanding of and access to ACF programs and policies; and coordinates and serves as ACF liaison with the Assistant Secretary for Public Affairs. The Office serves as Regional Liaison on public affairs issues. The Deputy Director assists the Director in carrying out the responsibilities of the Office.

B. Division of Public Information develops and implements public affairs strategies to achieve ACF program objectives in coordination with other ACF components. It coordinates news media relations strategy; responds to all media inquiries concerning ACF programs and related issues; develops fact sheets, news releases, feature articles for magazines and other publications on ACF programs and initiatives; and manages preparation and clearance of speeches and official statements on ACF programs. It coordinates regional public affairs policies and public affairs activities pertaining to ACF programs and initiatives.

C. Division of Publications Services directs the audio-visual, publication and printing management systems for ACF. It manages preparation and clearance of all ACF audio-visual product, publications, and graphic designs, including planning, budget oversight and technical support. It provides centralized graphics design services to ACF. It reviews requests for proposals for contracts and grants which involve publications, audio-visual materials and/or public information and education activity.

The Division also provides technical leadership and services in public information, printing, and mail distribution. Recommends approaches for meeting internal and external communications needs of the ACF. Acts as focal point for clearance of all publications and audio-visual projects whether produced in-house or by contract or grant.

VI. Delete Chapter KT, "The Office of Legislative Affairs and Budget," in its entirety and replace with the following:

Office of Legislative Affairs and Budget
KT.00 Mission
KT.10 Organization
KT.20 Functions

KT.00 Mission. The Office of Legislative Affairs and Budget (OLAB) provides leadership in the development of legislation, budget, and policy, ensuring consistency in these areas among ACF program and staff offices, and with ACF and the Department's vision and goals. It advises the Assistant Secretary for Children and Families on all policy and programmatic matters which substantially impact the agency's legislative program, budget development, budget execution and regulatory agenda. The Office serves as the primary ACF contact for the Department, the Executive Branch, and the Congress on all legislative, budget development, and regulatory activities.

KT.10 Organization. The Office of Legislative Affairs and Budget is headed by a Director, who reports to the Assistant Secretary for Children and Families.

KT.20 Functions. The Office of Legislative Affairs and Budget serves as the principal advisor to the Assistant Secretary for Children and Families on all policy and programmatic matters which substantially impact on legislative affairs, budget development, budget execution and the regulatory agenda; and represents the Assistant Secretary on budget, policy and legislative materials and activities.

Serves as the primary ACF contact for the Department, the Executive Branch, and Congress on all budget development and budget execution activities; manages the development and presentation of ACF's budget; provides guidance to ACF program and staff components in preparing material in support of budget development; manages the ACF regulatory development process; negotiates regulatory policy positions with the Department and the Executive Branch; provides guidance to ACF programs and staff components on policy and programmatic matters which substantially impact the budget and regulatory development process; and reviews and analyzes other policy significant documents to ensure consistency with ACF's budget, vision and goals.

Serves as the focal point for congressional liaison in ACF and for the Office of Assistant Secretary for Legislation; counsels and advises the Assistant Secretary for Children and Families and senior ACF staff on congressional activities and relations; manages the preparation of testimony

and briefings; negotiates clearance of testimony; monitors hearings and other congressional activities which affect ACF; and manages congressional inquiries.

Manages the ACF legislative planning cycle and the development of Reports to Congress; reviews and analyzes a wide range of Congressional policy documents including, legislative proposals, pending legislation, and bill reports; solicits and synthesizes internal ACF comments on such documents; negotiates legislative policy positions with the Department and the Executive Branch; and reviews other policy significant documents to ensure consistency with statutory and congressional intent and the agency legislative agenda.

Facilitates the preparation of comprehensive administrative (salaries and expenses) budget for ACF; and designs and develops budget estimating modes and procedures.

VII. Delete Chapter KP, "The Office of Program Support," retitle it as the "Office of the Deputy Assistant Secretary for Administration" and replace with the following:

Office of the Deputy Assistant Secretary for Administration

KP.00 Mission
KP.10 Organization
KP.20 Functions

KP.00 Mission. The Deputy Assistant Secretary for Administration serves as principal advisor and counsel to the Assistant Secretary for Children and Families on all aspects of personnel administration and management, information resource, financial, grants and procurement issues, staff development and training activities, organizational development and organizational analysis, administrative services and facilities management and state systems. Oversees the Executive Secretariat Office, the ACF Equal Employment Opportunity and Civil Rights program and all special initiatives activities for ACF.

KP.10 Organization. The Office of the Deputy Assistant Secretary for Administration is headed by the Deputy Assistant Secretary who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

- Office of the Deputy Assistant Secretary for Administration (KPA)
- Office of Information Services (KPB)
- Office of Financial Services (KPC)
- Office of Management Services (KPD)
- Office of Customer Service and Administration (KPE)
- Office of State Systems (KPF)
- Executive Secretariat Office (KPG)
- Equal Employment Opportunity/Civil Rights and Special Initiatives Staff (KPH)
- Office of Human Resource Management (KPJ)
- Office of Staff Development and Organizational Resources (KPK)
- Office of Administrative Services and Facilities Management (KPL)

KP.20 Functions. A. Office of the Deputy Assistant Secretary for Administration directs and coordinates all administrative activities for the Administration for Children and Families. The Deputy Assistant Secretary for Administration serves as ACF's Chief Financial Officer (CFO); ACF's Chief Grants Management Officer; Federal Manager's Financial Integrity Act (FMFIA) Management Control Officer; Principal Information Resource Management Official serving as ACF's Chief Information Officer responsible for implementing the Information Technology Management Reform Act; and Reports Clearance Officer. The Deputy Assistant Secretary for Administration serves as the ACF liaison to the General Counsel and, as appropriate, initiates action in securing resolution of legal matters relating to management of the agency, and represents the Assistant Secretary on all administrative litigation matters. The Deputy Assistant Secretary for Administration provides day-to-day executive leadership and direction to the Equal Employment Opportunity/ Civil Rights and Special Initiatives Staff, Office of Staff Development and Organizational Resources, Office of Human Resource Management, Office of Administrative Services and Facilities Management, the Executive Secretariat Office, Office of Information Services, Office of Financial Services, Office of Management Services, Office of Customer Services and Administration and Office of State Systems. The Deputy Assistant Secretary for Administration represents the Assistant Secretary in HHS and with other Federal agencies and task forces in defining objectives and priorities, and in coordinating activities associated with reinvention and continuous improvement initiatives.

B. The Office of Information Services (OIS) provides centralized information technology policy, procedures, standards and guidelines; develops long-range information resource management (IRM) plans; develops IRM policy, procurement plans and budget for OIS; develops and implements procurement strategies for ADP support services; serves as the Deputy Chief Information Officer supporting ACF's responsibilities under the Information Technology Management Reform Act; reviews and analyzes all ADP acquisition documentation for compliance with applicable laws and regulations as well as for procurement strategy; coordinates technical assistance provided to program offices on ADP support services procurement; represents ACF on the Department's IRM Advisory Council; provides liaison and manages major interdepartmental IRM initiatives; conducts major information system reviews of ADP systems as required by the Department; directs and coordinates ACF's systems security and privacy responsibilities; maintains an ACF-wide program data inventory; coordinates mandated OMB approvals required under the Paperwork Reduction Act; and plans, directs and maintains ACF electronic records management system.

OIS plans, manages, maintains and operates ACF's local area networks (LANs), national wide-area network (WAN) and personal computers; provides for equipment and software acquisition, maintenance and user support for end-user computing; manages and maintains a Help Desk for ACF users and provides information technology and software training in coordination with ACF components; develops plans and places orders for data communications services; provides liaison with HHS, GSA and private firms on data telecommunications matters; and provides assistance to ACF components to identify needs for and use of data telecommunications equipment and systems.

OIS designs, develops, implements and maintains application systems to support ACF administrative, budget and program systems; provides technical assistance to ACF program offices procuring system support services; provides technical assistance on automated systems to state and local agencies who are users of ACF's Computer Center; and develops software policy, procedures, standards and guidelines.

C. The Office of Financial Services (OFS) supports the Deputy Assistant Secretary for Administration in fulfilling ACF's Chief Financial Officer, Management Control Officer, and Chief Grants Officer responsibilities including preparation of the CFO 5 Year Plan; performs audit oversight and liaison activities, including preparing reports to Congress, Office of the General Counsel and the Office of the Inspector General. OFS writes/interprets financial policy and researches appropriation law issues; oversees and coordinates ACF's Federal Manager's Financial Integrity Act

(FMFIA) activities; performs debt management functions; and develops and administers quality assurance, training and certification programs for grants management; and responsible for the annual preparation and audit of ACF's financial statement requirements. It develops/interprets internal policies and procedures for OFS components and coordinates the management of ACF's interagency agreement activities.

OFS provides agency-wide guidance to program and regional office staff on grant related issues; including developing and interpreting financial and grants policy, coordinating strategic grants planning, facilitating policy advisory groups, and assuring consistent grant program announcements. OFS prepares, coordinates and disseminates action transmittals, information memoranda, and other policy guidance on financial and grants management issues; provides financial and grants administration training and technical assistance to ACF staff and grantees; and in coordination with the Office of Management Services, directs and/or coordinates management initiatives to improve financial administration of ACF mandatory and discretionary grant programs. OFS also develops and delivers grants management training to ACF program and financial staff.

D. The Office of Management Services (OMS) provides centralized management and administration of acquisitions for ACF headquarters and regional components; assures that all contracts awarded conform to applicable statutes, regulations and policies; develops ACF policies, procedures and instructions for the award and administration of all ACF acquisitions; reviews and interprets proposed HHS and OMB regulations, circulares and directives pertaining to acquisition management; solicits, negotiates, awards, modifies, terminates and closes all acquisitions issued by ACF; conducts the Small and Disadvantaged Business Utilization Program; and provides training and technical assistance to program and staff components on significant acquisition policies and procedures. OMS serves as the lead for ACF in coordination and liaison within ACF and with the Department, OMB, GSA and other federal agencies on procurement management issues and activities.

OMS provides management and technical administration of ACF discretionary, formula, entitlement and block grants; assures that all grants awarded by ACF conform with applicable statutes, regulations, and policies; computes grantee allocations, prepares grant awards, ensures incorporation of necessary grant terms and conditions, and monitors grantee expenditures; analyzes financial needs under grant programs; provides data in support of apportionment requests; prepares reports and analyses on the grantee's use of funds; maintains liaison and coordination with appropriate ACF and HHS organizations to ensure consistency between ACF grant systems and the Department's grant payment systems; and provides technical assistance to ACF program and regional components on grant operations and technical grants management issues; and performs audit resolution activities for ACF grant programs. OMS serves as the lead for ACF in coordination and liaison with the Department and other federal agencies on grants management and administration operational issues and activities.

E. The Office of Customer Service and Administration (OCSA) develops and maintains a customer service plan for the Deputy Assistant Secretary for Administration (DASA) and conducts customer surveys for DASA; facilitates and assists in developing and writing standard operating procedures for all components within DASA; assists in office-specific training of DASA staff; assists DASA components with the provision of office-specific and functional training to program and regional offices; coordinates permanent and temporary teams formed within DASA; develops and maintains DASA staff directory and users' guide for DASA services.

OCSA is responsible for overseeing DASA's salaries and expenses budget. Provides direction to meet the human resource management needs within DASA; coordinates with the office which handles ACF's human resources activities and the Department to provide DASA staff with personnel services including position management, staffing, recruitment, employee and labor relations, employee assistance, payroll, staff development and training, and special hiring and placement programs; and maintains systems to track personnel actions to keep the Deputy Assistant Secretary for Administration and, as appropriate, the Directors of offices within DASA informed about the status of personnel actions, current full-time equivalency usage and salaries and expenses resources, and employee programs and benefits. All DASA personnel related issues, performance management activities and other administrative functions within DASA are handled within this office.

F. The Office of State Systems (OSS) oversees the Department's responsibilities for Federal financial participation in the funding of State automated systems. It coordinates ACF's development and implementation of strategies and policies related to payment integrity, electronic benefits transfer, welfare systems integration, and related initiatives and programs. It directs state systems activities on partnership, collaborative efforts, and technical assistance activities.

The Office provides leadership for provision of technical assistance to States on information systems projects; and advances the use of computer technology in the administration of welfare and social services programs by States. The Office is responsible for developing departmental policies and procedures under which States obtain Federal financial participation in the cost of automated systems development to support programs funded under the Social Security Act. It serves as the departmental focal point for the development and implementation of strategies and policies related to payment integrity, welfare systems integration and related initiatives and programs; and provides leadership and guidance to interagency work groups in these areas for the Department.

The Office reviews, analyzes, and approves/disapproves State requests for Federal financial participation for automated systems development activities which support the Child Care, Head Start, Child Welfare, Foster Care, Social Services, and Refugee Resettlement programs. It provides assistance to States in developing or modifying automation plans to conform to Federal requirements. It monitors approved State systems development activities; conducts periodic reviews to assure State compliance with regulatory requirements applicable to automated systems supported by Federal financial participation. It provides guidance to States on functional requirements for these automated information systems. It promotes interstate transfer of existing automated systems and provides assistance and guidance to improve ACF's programs through the use of automated systems.

G. The Executive Secretariat Office (ExecSec) ensures that issues requiring the attention of the Assistant Secretary, Deputy Assistant Secretaries and/or executive staff are addressed on a timely and coordinated basis; facilitates decisions on matters requiring immediate action including White House, congressional and secretarial assignments. It serves as the ACF liaison with the HHS Executive Secretariat. It receives, assesses and controls incoming correspondence and assignments to the

appropriate ACF component(s) for response and action; provides assistance and advice to ACF staff on the development of responses to correspondence and on the controlled correspondence system; coordinates and/or prepares congressional correspondence; and tracks development of periodic reports and facilitates departmental clearance. The Director of the Executive Secretariat Office serves as the Freedom of Information Act Officer for ACF and coordinates hot line calls received by the Office of Inspector General and the General Accounting Office on ACF operations and personnel.

H. The Equal Employment Opportunity/Civil Rights and Special Initiatives Staff (EEOCR&SI) serves as the principal advisor to the Deputy Assistant Secretary for Administration on all aspects of the Equal Employment Opportunity and Civil Rights program. Serves as the liaison between ACF and the HHS Office for Civil Rights. Provides leadership for all special initiative activities for ACF; participates in pilot projects; and represents ACF on committees which relate to the functions of the Staff. Manages and coordinates honor awards programs for ACF.

The Staff directs and manages the ACF Equal Employment Opportunity and Civil Rights program in accordance with Equal Employment Opportunity Commission (EEOC) regulations and HHS guidelines. Immediate oversight is provided by a staff under the direction of the ACF EEO Officer. Plans, develops, and evaluates programs and procedures designed to identify and eliminate discrimination in employment, training, incentive awards, promotion and career opportunities. Responsible for implementing and evaluating a cost-effective, timely, and impartial system for processing individual complaints of discrimination under Title VII of the Civil Rights Act of 1964, as amended. Provides information, guidance, advice, and technical assistance to ACF supervisors and managers on Affirmative Employment planning and other means of achieving parity and promoting work force diversity. Responsible for ensuring that ACF-conducted programs do not discriminate against recipients on the basis of race, color, national origin, age or disability. Monitors and implements civil rights compliance actions under Title VI, Section 504 of the Rehabilitation Act of 1973, as amended and the Age Discrimination Act of 1975, as amended. Implements the applicable provisions of the Americans with Disabilities Act of 1990.

J. The Office of Human Resource Management (OHRM) directs and manages the personnel operations and services for the Administration for Children and Families (ACF). Provides advice and assistance to ACF managers in their personnel management activities including workforce planning, recruitment, selection, position management, performance management, and incentive awards. Provides a variety of services to ACF employees, including provision of employee assistance services and career, retirement and benefits counseling. Serves as ACF liaison to the Department on all payroll matters. Provides the following personnel administrative services: the exercise of appointing authority, position classification, awards authorization, personnel management evaluation, personnel action processing and recordkeeping. Manages the merit promotion, special hiring and placement programs.

Provides leadership, oversight, and coordination for the planning, analysis, and development of human resource policies and programs. Serves as liaison between ACF, the Department, and the Office of Personnel Management. Provides technical advice and assistance on policy, legal and regulatory matters. Formulates and interprets policies pertaining to all areas related to personnel administration and management. Formulates and interprets new human resource programs and strategies.

Formulates and oversees the implementation of ACF-wide policies, regulations and procedures concerning all aspects of the Senior Executive Service (SES), and SES equivalent recruitment, staffing, position establishment, compensation, award, performance management and other related personnel areas. Manages the performance recognition systems and the responsibilities of the Executive Resources Board (ERB) and the Performance Review Board (PRB). Coordinates the Schedule C and Executive personnel activity with the Office of the Secretary. Is the focal point for data, reports, and analyses relating to SES, Schedule C and other executive personnel, such as those in Executive Level positions.

Provides management advisory service on all labor management and employee relations issues. Plans and coordinates ACF-wide employee relations and labor relations activities, including the application and interpretation of the Federal Labor-Management Relations Program, collective bargaining agreements, disciplinary and adverse action regulations, and appeals. Pursues human relations innovations such as alternative dispute resolutions and serves as the focal point on all issues pertaining to the Labor-Management Partnership Council. Provides leadership in assuring the integrity, effectiveness and impartiality of ACF's alternative dispute resolution programs, grievances, and merit systems program. Participates in the formulation and implementation of policies, practices and matters affecting bargaining unit employees' working conditions by assuring management's compliance with the Federal Labor Relations Program (5 U.S.C. Chapter 71).

Administers ACF's personnel security responsibilities and ethics program. Coordinates the ethics program with the Department's Office of Special Counsel for Ethics.

K. The Office of Staff Development and Organizational Resources (OSDOR) provides leadership in directing and managing agency-wide staff development and training activities for ACF. The Office is responsible for the functional management of all program, common needs and management training in the agency, including policy development, guidance, and technical assistance and evaluation of all aspects of program, career, employee, supervisory, management, executive and organizational development. Provides leadership in implementing the recommendations of the Staff Development and Training Team by managing/overseeing and monitoring the ACF Training Resource Center and institutionalizing long-term developmental training for ACF employees. Support the daily work and special projects of ACF employees by managing the Information Resource Center (library).

The Office serves as the principal source of advice through the Deputy Assistant Secretary for Administration to the Assistant Secretary on organizational design by collaborating with staff to develop high-leverage, tailored solutions to achieve measurable outcomes and to transform the agency to a quality organization that supports ACF's vision, values and goals. The Office advises the Assistant Secretary through the Deputy Assistant Secretary for Administration on all aspects of ACF organizational analysis including: planning for new organizational elements; and planning, organizing and performing studies, analysis and evaluations related to structural, functional and organizational issues, problems and policies to ensure organizational effectiveness. Conducts the review process for ACF

reorganization proposals. Acts as liaison with the HHS Office of the Assistant Secretary for Management and Budget to coordinate organizational proposals requiring Secretarial approval; prepares functional statements and official organizational charts. Administers ACF's system for review, approval, and documentation of delegations of authority and maintains the guidelines related to the delegations of authority.

L. The Office of Administrative Services and Facilities Management (OASFM) directs and manages ACF's administrative support services, facilities management programs and activities.

Provides agency-wide guidance on administrative issues; prepares, coordinates and disseminates information, policy, and/or procedural guidance on administrative and facilities management issues. Directs and/or coordinates management initiatives to improve ACF administrative and facilities management services with the goal of continually improving services while reducing costs.

Maintains budgetary controls on administrative services accounts, reconciling accounting reports and invoices, and monitoring all spending. Controls OASFM Visa credit card for small purchases. Establishes and manages contracts and/or blanket purchase agreements (BPAs) for administrative support and facilities management services, including space design, building alteration and repair, telecommunications, reprographics, physical security, moving, labor, records and property management and inventory, systems furniture acquisitions and assembly, fleet management, and the Information Resource Center (library).

Provides management and oversight of ACF mail delivery services and activities, including Federal and contractor postal services nationwide, covering all classes of U.S. Postal Service mail, priority and express mail services, and courier services, etc.

Directs all activities associated with the ACF Master Housing Plan, including coordination and development of the agency long-range space budget; planning, budgeting, identification, solicitation, acceptance and utilization of office and special purpose space, repairs, and alterations; principal liaison with General Services Administration (GSA) and other Federal agencies, building managers and facilities engineers, architects and commercial representatives, for space acquisition, negotiation of lease terms, dealing with sensitive issues such as handicapped barriers, space shortages, and security. Develops and maintains space floor plans and inventories, directory boards, and locator signs. OASFM serves as the lead for ACF in coordination and liaison with Departmental, GSA, Federal Protective Service, and other Federal agencies on implementation of Federal security directives. Responsible for planning and executing the Agency's environmental health, safety, and physical security programs, ensuring that appropriate occupational health and safety and occupant emergency evacuation plans are in place. Serves as principal liaison with private and/or Federal building managers for all administrative services and facilities management activities. Responsible for issuing, and managing and controlling badge and cardkey systems to control access to agency space for security purposes.

Develops and/or implements agency telecommunications management policy in accordance with Federal regulations and procedures. Reviews and directs payment of all agency telephone invoices. Recommends and advises on the design and function of telecommunications systems, based on user needs, costs and technological availability. Communicates directly with private industry service providers to coordinate the acquisition, installation and maintenance of voice/data telecommunications equipment and systems. Responsible for other sources of communications capability such as pagers, cellular phone service, cable TV service, and audio conferencing equipment and service. Coordinates the implementation of personal video and video conferencing. Updates and maintains the ACF LAN-based telephone directory, handles the distribution of all commercial directories, and updates and maintains the databases for telephone lines, and equipment inventories.

Plans, manages/operates employee transportation programs, including shuttle service and fleet management, employee and visitor parking, and commuter services and programs including transit subsidies and ridesharing. Develops and implements ACF travel policies and procedures consistent with Federal requirements. Provides technical assistance and oversight; coordinates ACF use of the Travel Management System; manages employee participation in the American Express Credit Card program for travel.

Purchases and tracks common use supplies, stationery and publications; manages equipment repair services and reprographics management activities; controls and maintains equipment and personal property inventories; develops and coordinates records (paper) and forms management, and real property activities.

VIII. Within Chapter K, replace the term "Deputy Assistant Secretary for Program Operations" with "Deputy Assistant Secretary for Administration."

Dated: December 24, 1997.

Olivia A. Golden,

Assistant Secretary for Children and Families.

[FR Doc. 97–34217 Filed 12–31–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0521]

Richard-James, Inc.; Premarket Approval of SILIKON 1000-Silicone Oil

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application submitted by Richard-James, Inc., Peabody, MA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the SILIKON 1000-Silicone Oil. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 25, 1997, of the approval of the application.

DATES: Petitions for administrative review by February 2, 1998.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Saviola, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2018.

SUPPLEMENTARY INFORMATION: On February 22, 1995, Richard-James, Inc., Peabody, MA 01960, submitted to CDRH an application for premarket approval of the SILIKON 1000-Silicone Oil. The device is an intraocular fluid and is indicated for use as a prolonged retinal tamponade in selected cases of complicated retinal detachments where other interventions are not appropriate

for patient management. Complicated retinal detachments or recurrent retinal detachments occur most commonly in eyes with proliferative vitreoretinopathy (PVR), proliferative diabetic retinopathy (PDR), cytomegalovirus (CMV) retinitis, giant tears, and following perforating injuries. SILIKON 1000 is also indicated for primary use in detachments due to acquired immune deficiency syndrome (AIDS) related CMV retinitis and other viral infections affecting the retina.

On January 13, 1997, the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On September 25, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 2, 1998, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 1, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–34156 Filed 12–31–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0519]

Vitrophage, Inc.; Premarket Approval of VITREON®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application submitted by Vitrophage, Inc., Lyons, IL, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of VITREON® . After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 30, 1997, of the approval of the application.

DATES: Petitions for administrative review by February 2, 1998.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Saviola, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1744.

SUPPLEMENTARY INFORMATION: On December 6, 1991, Vitrophage, Inc., Lyons, IL 60534, submitted to CDRH an application for premarket approval of VITREON®. The device is a purified perfluorocarbon liquid and is indicated for use as an intraoperative surgical aid during vitreoretinal surgery in patients with primary and recurrent complicated retinal detachments. Complicated cases include giant retinal tear or retinal dialysis, proliferative vitreoretinopathy, proliferative diabetic retinopathy, tractional retinal detachments, and blunt or penetrating ocular trauma.

On October 19, 1995, the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On September 30, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 2, 1998, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information,

identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 1, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–34157 Filed 12–31–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0514]

CDRH Interim Regulatory Policy for External Penile Rigidity Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is making available a policy from its Center for Devices and Radiological Health (CDRH) entitled "CDRH Interim Regulatory Policy for External Penile Rigidity Devices." The document outlines several changes in how FDA regulates external penile rigidity devices including constriction rings, vacuum pumps, and penile splints.

DATES: Written comments concerning this guidance may be submitted at any time.

ADDRESSES: Written comments concerning this guidance must be submitted to the contact person. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the policy. Submit written requests for single copies of the "CDRH Interim Regulatory Policy for External Penile Rigidity Implants" to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

FOR FURTHER INFORMATION CONTACT: Donald St. Pierre, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION:

I. Background

External penile rigidity devices are unclassified medical devices designed to promote or maintain sufficient penile rigidity for sexual intercourse. This document clarifies when premarket review is required for new external penile rigidity devices using a uniform approach. The new policy also allows manufacturers the option of marketing external penile rigidity devices as prescription and/or over the counter (OTC) devices.

This guidance document represents the agency's current thinking on regulation of external penile rigidity devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both. The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (61 FR 8961, February 27, 1997). This guidance is issued as Level 2 guidance consistent with GGP's.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so using the World Wide Web (WWW). The Center for Devices and Radiological Health (CDRH) maintains an entry on the World Wide Web for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH Home Page includes the CDRH Interim Regulatory Policy for External Penile Rigidity Devices, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The CDRH Interim Regulatory Policy for External Penile Rigidity Devices will be available at http://www.fda.gov/cdrh/ode/expenrig.html.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

III. Comments

Interested persons may at any time submit written comments on the guidance document to the contact person. Comments will be considered in determining whether to revise or revoke the guidance document.

Dated: December 1, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–34158 Filed 12-31-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1904–NC]

RIN 0938–AI24

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After October 1, 1997

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice sets forth a revised schedule of limits on home health agency costs that may be paid under the Medicare program for cost reporting periods beginning on or after October 1, 1997. These limits replace the per visit limits that were set forth in our July 1, 1996 notice with comment period (61 FR 34344) and supersede those set forth in our July 1, 1997 notice with comment period (62 FR 35608). This notice also provides, in accordance with the Balanced Budget Act of 1997, that there be no changes in the home health per visit limits for cost reporting periods beginning on or after July 1, 1997 and before October 1, 1997 (that is, the cost limits set forth in our July 1, 1996 notice will apply to cost reporting

periods beginning during this time period); that the establishment of the cost per visit limitations for cost reporting periods beginning on or after October 1, 1997 be based on 105 percent of the median of the labor-related and nonlabor per visit costs for freestanding home health agencies; that there be no updates in the home health costs limits (including no adjustments for changes in the wage index or other updates) for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996; and the wage index value that is applied to the labor portion of the per visit limitations be based on the geographic area in which the home health service is furnished.

DATES: *Effective Date:* This is a major rule under title 5, United States Code, section 804(2). As indicated in section XI.A. of the preamble of this notice with comment period, pursuant to 5 U.S.C. 553(b)(B), for good cause we find that prior notice and comment procedures are impracticable and unnecessary. Pursuant to 5 U.S.C. section 808(2), as well as section 1861(v)(1)(L)(i) of the Social Security Act (as amended by section 4602(a)(5) of Pub. L. 105–33), this schedule of limits is effective for cost reporting periods beginning on or after October 1, 1997.

Comment Period: Written comments will be considered if we receive them at the appropriate addresses, as provided below, no later than 5 p.m. on March 3, 1998.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1904–NC, P.O. Box 7517, Baltimore, Maryland 21207–0517

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201,

or

Room C5–09–26, Central Building, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Comments may also be submitted electronically to the following e-mail address: HCFA1904NC@hcfa.gov. E-mail comments must include the full name, postal address, and affiliation (if applicable) of the sender and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1904–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690–7890).

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FOR FURTHER INFORMATION CONTACT: Michael Bussacca, (410) 786–4602.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

Section 1861(v)(1)(A) of the Social Security Act (the Act) authorizes the Secretary to establish limits on allowable costs incurred by a provider of services that may be paid under the Medicare program, based on estimates of the costs necessary in the efficient delivery of needed health services. Under this authority, we have maintained limits on home health agency (HHA) per-visit costs since 1979. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by the provider. Implementing regulations are located at 42 CFR 413.30. Additional statutory provisions specifically governing the limits applicable to HHAs are contained at section 1861(v)(1)(L) of the Act. Section 1861(v)(1)(L)(i) of the Act, as amended by section 4602(a) of the Balanced Budget Act of 1997 (BBA '97), Pub. L. 105–33, specifies that the cost limits must not exceed 105 percent of the median of the labor-related and nonlabor per-visit costs for freestanding HHAs. Section 1861(v)(1)(L)(vii) of the Act, as added by section 4602(c) of BBA '97, requires that the Secretary establish HHA cost limits on an annual basis for cost reporting periods beginning on or after October 1 of each year beginning in 1998, (except the cost limits established for cost reporting periods beginning on or after October 1, 1997 must be established by January 1, 1998). In establishing these limits, the statute directs the Secretary to use the applicable hospital wage index, as discussed below.

This notice with comment period sets forth revised cost limits for cost reporting periods beginning on or after October 1, 1997. As required by section 1861(v)(1)(L)(iii) of the Act, we are using the area wage index applicable under section 1886(d)(3)(E) of the Act which were determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the home health service is furnished. For purposes of this notice, the HHA wage index is based on the most recent hospital wage index, that is, the prereclassified hospital wage index effective for hospital discharges on or after October 1, 1997, which uses Federal fiscal year (FY) 1994 wage data. As the statute also specifies, in applying the hospital wage index to HHAs, no adjustments are to be made to account for hospital reclassifications under section 1886(d)(8)(B) of the Act, decisions of the Medicare Geographic Classification Review Board (MGCRB) under section 1886(d)(10) of the Act, or decisions by the Secretary.

B. Relevant Provisions of the Balanced Budget Act of 1997

The BBA '97 made major changes that affect the cost per visit limitations applicable to services provided by HHAs. The provisions of Pub. L. 105–

33 that we are implementing in this notice with comment period are as follows:

1. Delay in Updates

Section 4602(b) of BBA '97 amended section 1861(v)(1)(L)(iii) of the Act to provide that there be no changes in the home health per visit cost limits for cost reporting periods beginning on or after July 1, 1997 and before October 1, 1997. The effect of this provision is that a HHA's latest per-visit cost limit for a cost reporting period beginning on or after July 1, 1996 and before October 1, 1996, as calculated under the notice published July 1, 1996 (61 FR 34344), will remain in effect until its cost reporting period beginning on or after October 1, 1997. For providers entering the Medicare program on or after July 1, 1997 and before October 1, 1997, the applicable cost limit will be the cost limit that would have applied for the identical cost reporting period beginning on or after July 1, 1996 and before October 1, 1996. (For example, if a provider enters the Medicare program on July 1, 1997, with a 12-month cost reporting period, its cost limit will be determined in the same manner as a cost limit for a period beginning July 1, 1996 and ending June 30, 1997. If the provider entering the Medicare program has a short cost reporting period, for example, a period beginning July 1, 1997 and ending December 31, 1997, the cost limit will be determined in the same manner as a cost limit for a period beginning July 1, 1996, and ending December 31, 1996.) Therefore, the notice of schedule of limits on HHA costs per visit for cost reporting periods beginning on or after July 1, 1997, which was published in the **Federal Register** (62 FR 35608) on July 1, 1997 has been superseded by the change in the statute.

The notice of schedule of limits on HHA costs per visit, which was published in the **Federal Register** on July 1, 1997 (62 FR 35608) also contained comments and responses to the notice of schedule of limits published in the **Federal Register** on July 1, 1996 (61 FR 34344). The comments and responses in the July 1, 1997 **Federal Register** (62 FR 35609 through 35611) are not repeated in this notice. Even though the cost limitations in the July 1, 1997 **Federal Register** have been superseded by Pub. L. 105–33, the responses to the comments to the July 1, 1996 notice are still relevant and effective.

2. Reduction to limits

Section 1861(v)(1)(L)(i)(IV) was added to the Act by section 4602(a)(5) of the BBA '97 and requires the establishment of the cost per visit limitations based on 105 percent of the median of labor-related and nonlabor-related per visit costs for freestanding HHAs. This is a change to the previous requirement that the cost limitations be established based on 112 percent of the mean of the labor-related and nonlabor per visit cost for freestanding HHAs.

The impact of this change will be discussed in general in the impact statement in section XI of this notice with comment period.

3. Reduction in Market Basket Updates

Section 1861(v)(1)(L)(iv) was added to the Act by section 4601(a) of BBA 97 and requires the Secretary not to take into account any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996 in establishing the limitations for cost reporting periods beginning after September 30, 1997. This, in effect, reduces the factors for increasing the database dollars used in calculating the limits. How these factors are determined is explained further in section VII of this notice with comment period.

4. Application of per Visit Limitation

Section 1861(v)(1)(L)(iii) was amended by section 4604(b) of BBA '97 to require that the utilization of the area wage index applicable under section 1886(d)(3)(E) of the Act be determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the home health services are furnished. Previously, the survey was from hospitals located in the geographic area in which the home health agency is located, and applied to cost limitations for cost reporting periods beginning prior to October 1, 1997. In effect, the cost per visit limitation that will apply for the service furnished by the HHA will be the urban or rural limit and the appropriate wage index for the geographic area where the home health service is furnished. A Program Memorandum (Rev. AB–97–18), which was published in September 1997, outlined the billing changes that are needed to properly implement this provision.

5. Effective Date

Section 1861(v)(1)(L)(vii) of the Act was added by section 4602(c) of BBA '97. Beginning in 1998, the Secretary is required to establish the per-visit limits by August 1 of each year. However, for cost reporting periods beginning on or after October 1, 1997, the Secretary need only establish those limits by January 1, 1998. In accordance with section 1861(v)(1)(L)(vii)(I), we are establishing by January 1, 1998, the per-visit limits for cost reporting periods beginning on or after October 1, 1997.

II. Updating the Wage Index on a Budget-Neutral Basis

Section 4207(d)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, requires that in updating the wage index, aggregate payments to HHAs should be equal to the amount that would result from use of the 1982 wage index. On July 1, 1997, we published the appropriate adjustment factor to comply with this requirement to ensure that payments were not affected by the hospital wage index published on August 30, 1996.

As stated before, BBA '97 was passed and included legislation that affected the cost per-visit limitations. The effect of the changes in the cost limit calculations (reducing per visit limits from 112% of the mean to 105% of the median and freezing market basket updates) impacts the level of payments and, therefore, affects the budget neutrality factor. To determine the new adjustment factor, we used the same methodology as explained in the July 1, 1997 **Federal Register**, page 35611, using the cost limits specified in this notice. As has been the case with each of the new wage indices used in calculating home health limits since the requirement of budget neutrality was established, agencies would have received a higher adjusted cost limitation in the aggregate. Aggregate payments to HHAs can only be affected to the extent that agencies have costs exceeding the limits. When only a small portion of total costs exceed the limits, the adjustment is effectively spread over agencies, and the labor portion of the limits needs to be increased by a large factor to reach the amount by which agencies, in the aggregate, would have benefited using the 1982 wage index. It follows that as the portion of costs exceeding the limits becomes larger, the adjustment factor becomes smaller. Because the new cost limits are lower, more providers are affected by the limits. Under the old cost limit, 31% of home health agencies were over the limit, as compared to 65% of home health agencies over the new cost limit. In order to achieve the level of savings that would have occurred if the 1982 wage index was used, less of an increase is necessary to raise the limits to achieve budget neutrality. We used the same methodology as contained in the **Federal Register** published July 1, 1997 and determined the new budget neutrality factor to be 1.009.

III. Update of Limits

The cost report data used to develop the schedule of limits set forth in this notice is for the same period as that used in setting the limits that were effective July 1, 1996. We have updated the cost limits to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 1998 (excluding, as required by statute, any changes in the home health market basket for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996).

A. Data Used

To develop the schedule of limits that is effective for cost reporting periods beginning on or after October 1, 1997, we extracted actual cost per-visit data from settled Medicare cost reports of freestanding HHAs for periods ending on or after June 30, 1991, and settled by October 1, 1995. The majority of the cost reports were from FY 1993. We then adjusted the data using the latest available market basket indexes to reflect expected cost increases occurring between the cost reporting periods contained in our database and September 30, 1998. However, section 1861(v)(1)(L)(iv) prohibits the Secretary from taking into account any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996. Therefore, we excluded this time period when we adjusted the database for the market basket increases.

B. Wage Index

The wage index is used to adjust the labor-related portion of the limits to reflect differing wage levels among areas. In setting this schedule of limits, we used the FY 1998 hospital wage index, which is based on 1994 hospital wage data.

Each HHA's labor market area is determined based on the definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). Section 1861(v)(1)(L)(iii) of the Act requires us to use the current hospital wage index (that is, the FY 1998 hospital wage index, which was published in the **Federal Register** on August 29, 1997 (62 FR 46070)) to establish the HHA cost limits. Therefore, this schedule of limits reflects the MSA definitions that are currently in effect under the hospital prospective payment system.

We are continuing to incorporate exceptions to the MSA classification system for certain New England counties that were identified in the July 1, 1992 notice (57 FR 29410). These exceptions have been recognized in setting hospital cost limits for cost reporting periods beginning on and after July 1, 1979 (45 FR 41218), and were authorized under section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21). Section 601(g) of Public Law 98–21 requires that any hospital in New England that was classified as being in an urban area under the classification system in effect in 1979 will be considered urban for the purposes of the hospital prospective payment system. This provision is intended to ensure equitable treatment under the hospital prospective payment system. Under this authority, the following counties have been deemed to be urban areas for purposes of payment under the inpatient hospital prospective payment system:

- Litchfield County, CT in the Hartford, CT MSA.
- York County, ME and Sagadahoc County, ME in the Portland, ME MSA.
- Merrimack County, NH in the Boston-Brockton-Nashua, MA-NH MSA.
- Newport County, RI in the Providence-Warwick-Pawtucket, RI MSA.

We are continuing to grant these urban exceptions for the purpose of applying the Medicare hospital wage index to the HHA cost limits. These exceptions result in the same New England County Metropolitan Area (NECMA) definitions for hospitals, skilled nursing facilities (SNFs), and HHAs. In New England, MSAs are defined on town boundaries rather than on county lines but exclude parts of the four counties cited above that would be considered urban under the MSA definition. Under this notice, those four counties are urban under either definition, NECMA or MSA.

Section 1861(v)(1)(L)(iii), as amended by section 4604(b) of BBA '97, requires us to establish these limits using the area wage index applicable under section 1886(d)(3)(E) of the Act and determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the home health service is furnished. Prior to the amendment, the wage index as applied to the labor portion of the per visit limitation was based on the location of the HHA. Effective with cost reporting periods beginning on or after October 1, 1997, the wage-index as applied to the labor portion of the per visit limitation must be based on the geographic location in which the home health service is actually furnished rather than the physical location of the HHA itself. Therefore, in establishing the limits for the HHAs, we will apply the wage index based upon the location of where the service is furnished. See discussion in section VII.

IV. Provisions of the HHA Schedule of Limits

The schedule of limits set forth below was calculated using 105 percent of the median per-visit costs of freestanding HHAs and is adjusted by the latest estimates in the market basket index, excluding any changes in the home health market basket for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996.

The schedule of limits effective for cost reporting periods beginning on or after October 1, 1997, is based on the actual cost per-visit data from settled Medicare cost reports from freestanding HHAs for periods ending on or after June 30, 1991, and settled by October 1, 1995, updated by the market basket rate of increase, excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996, and provides for the following:

- A classification system based on whether an HHAs services are furnished within an MSA, a NECMA, and/or a non-MSA area. (See Tables 4a and 4b in section IX. of this notice for the listing of MSAs, NECMAs, and rural areas.)
- The use of a single schedule of limits for hospital-based and freestanding agencies. This single limit is based on the cost experience of freestanding agencies in accordance with section 1861(v)(1)(L)(i) of the Act.
- The use of a market basket index, which was developed from the price of goods and services purchased by HHAs to account for the impact of changing wage and price levels on HHA costs.
- The current hospital wage index that is used to adjust the labor-related portion of the limits. The employee wage portion of the market basket index, including a proportionate share of contract services (64.226 percent), and the employee benefits portion (13.442 percent) are used to determine the labor component (77.668 percent) of all HHA per-visit costs used to set the limits.
- Separate treatment of the labor and nonlabor components of per-visit costs. The separate components of costs are calculated by obtaining actual HHA cost data for each agency for cost periods ending on or after June 30, 1991 and settled before October 1, 1995, and increasing those data by the actual and projected increases in the HHA market basket index excluding any changes in the home health market basket with respect to cost reporting periods that

began on or after, July 1, 1994 and before July 1, 1996. We then separated each HHA's per-visit costs into labor and nonlabor portions, and divided the labor portion by the wage index value for the agency's location to control for the effect of geographic variations in prevailing wage levels. Separate means are computed for the labor and nonlabor components of per-visit costs. For each comparison group, the resulting amounts are shown in Table 3 of section VIII of this notice.

- The application of a cost-of-living adjustment to the nonlabor portion of the limit for HHAs located in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.
- Limits are determined for the per-visit cost of each type of home health service: skilled nursing care, physical therapy, speech pathology, occupational therapy, medical social services, and home health aide.
- Application of the limits in the aggregate after an HHA's actual costs are adjusted. An HHA's actual costs are adjusted for individual items of cost that are found to be excessive under Medicare principles of provider payment and for costs that are not included in the limitation amount. The limits are applied in the aggregate to the cost remaining after these adjustments are made. Payment is limited to the lesser of the actual costs, the cost aggregated limits, or the per beneficiary limitation. The per-beneficiary limitation must be established by April 1, 1998, under section 1861(v)(1)(L)(vii), as added by section 4602(c) of BBA '97 and will be effective for cost reporting periods beginning October 1, 1997.

V. Market Basket

The 1993-based cost categories and weights are listed in Table 1 below.

TABLE 1.—1993-BASED COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Cost category	1993-based market basket weight	Price proxy
Compensation, including allocated Contract Services' Labor	77.668	
Wages and Salaries, including allocated Contract Services' Labor.	64.226	HHA Occupational Wage Index.
Employee benefits, including allocated Contract Services' Labor.	13.442	HHA Occupational Benefits Index.
Operations & Maintenance	0.832	CPI–U Fuel & Other Utilities.
Administrative & General, including allocated Contract Services' Non-Labor.	9.569	
Telephone	0.725	CPI–U Telephone.
Paper & Printing	0.529	CPI–U Household Paper, Paper Products & Stationery Supplies.
Postage	0.724	CPI–U Postage.
Other Administrative & General, including allocated Contract Services Non-Labor.	7.591	CPI–Services.
Transportation	3.405	CPI–U Private Transportation.
Capital-Related	3.204	
Insurance	0.560	CPI–U Household Insurance.
Fixed Capital	1.764	CPI–U Owner's Equivalent Rent.
Movable Capital	0.880	PPI Machinery & Equipment.
Other Expenses, including allocated Contract Services' Non-Labor.	5.322	CPI–U All Items Less Food & Energy.
Total	100.000	

VI. Methodology for Determining Cost-Per-Visit Limits

A. Data

For this notice, the cost-per-visit limit values were determined by extracting settled actual cost-per-visit data from Medicare cost reports for cost reporting periods ending on or after June 30, 1991, and settled before October 1, 1995. We then adjusted the data using the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods contained in our database and September 30, 1998 excluding any changes in the home health market basket with respect to cost reporting periods which began on or after, July 1, 1994 and before July 1, 1996. The following adjustment factors were used to compute the per-visit costs:

TABLE 2.—FACTORS FOR INFLATING DATABASE DOLLARS TO SEPTEMBER 30, 1998

[Inflation Adjustment Factors[1]]

Fiscal year end	1992	1993	1994
January 31	.....	1.11250	1.07813
February 28	.....	1.10947	1.07550
March 31	.....	1.10642	1.07295
April 30	.....	1.10336	1.07046
May 31	.....	1.10033	1.06800
June 30	1.13438	1.09737	1.06565
July 31	1.13111	1.09450	1.06354
August 31	1.12791	1.09168	1.06165
September 30	1.12476	1.08891	1.05993
October 31	1.12166	1.08619	1.05838
November 30	1.11859	1.08349	1.05706

TABLE 2.—FACTORS FOR INFLATING DATABASE DOLLARS TO SEPTEMBER 30, 1998—Continued

[Inflation Adjustment Factors[1]]

Fiscal year end	1992	1993	1994
December 31	1.11554	1.08080	1.05599

[1] Source: The Home Health Agency Input Price Index, produced by HCFA. The forecasts are from Standard and Poor's DRI 3rd QTR 1997; @USSIM/TREND25YR0897@CISSIM/Control973 forecast exercise which has historical data through 1997:2.

Multiplying nominal dollars for a given fiscal year end by their respective inflation adjustment factor will express those dollars in the dollar levels for the fiscal year ending September 30, 1998.

The procedure followed to develop these revised tables, based on requirements from the BBA '97, was to hold the June 1994 level for input price index constant through June 1996. From July 1996 forward, we trended the revised index forward using the percentage gain each month from the HCFA Home Health Agency Input Price Index. Thus the monthly trend of the revised index is the same as that of the HCFA market basket for the period from July 1996 forward.

B. Cost Reporting Periods Consisting of Fewer Than 12 Months

HHAs may have cost reporting periods that are less than 12 months in length. This may happen, for example, when a new provider enters the Medicare program after its selected fiscal year has already begun, or when a provider experiences a change of ownership before the end of the cost reporting period. As explained in section IV. of this preamble, the data used in calculating the cost limits were updated to September 30, 1998. Therefore, the cost limits published in this notice are for a 12-month cost reporting period beginning October 1, 1997 and ending September 30, 1998. For 12-month cost reporting periods beginning after October 1, 1997 and before October 1, 1998, cost reporting year adjustment factors are provided in Table 5. However, when a cost reporting period consists of fewer than 12 months, adjustments must be made to the data that have been developed for use with 12-month cost reporting periods. To promote the efficient dissemination of cost limits to providers with cost reporting periods of fewer than 12 months, we are publishing the following examples and tables to enable intermediaries to calculate the applicable adjustment factors.

Cost reporting periods of fewer than 12 months may not necessarily begin on the first of the month or end on the last day of the month. In order to simplify the process in calculating "short period" adjustment factors, if the short cost reporting period begins before the sixteenth of the month, we will consider the period to have begun on the first of that month. If the start period begins on or after the sixteenth of the month, it will be considered to have begun at the beginning of the next month. Also, if the short period ends before the sixteenth of the month, we will consider the period to have ended at the end of the preceding month; if the short period ends on or after the sixteenth of the month, it will be considered to have ended at the end of that month.

Examples:

1. After approval by its intermediary, an HHA changes its fiscal year end from June 30 to December 31. Therefore, the HHA had a short cost reporting period beginning on July 1, 1998 and ending on December 31, 1998. The cost limits that apply to this short period must be adjusted as follows:

Step 1—From Table 6, sum the index levels for the months of July 1998 through December 1998: 6.63687.

Step 2—Divide the results from Step 1 by the number of months in the short period.
6.63687÷6=1.106145

Step 3—From Table 6, sum the index levels for the months in the common period of October 1997 through September 1998.
13.06926

Step 4—Divide the results in Step 3 by the number of months in the common period.
13.06926÷12=1.089105

Step 5—Divide the results from Step 2 by the results from Step 4. This is the adjustment factor to be applied to the published limits.
1.106145÷1.089105=1.015646

Step 6—Apply the results from Step 5 to the published cost limits.

a. Urban Skilled Nursing Labor Portion, $67.91×1.015646=$68.97

b. Urban Skilled Nursing Nonlabor Portion, $19.18×1.015646=$19.48

2. An HHA with a fiscal year end of November 30, 1998 changes ownership on September 21, 1998. The HHA is required to file a terminated cost report for the period of December 1, 1997 to September 21, 1998. The cost limits that apply to this short period must be adjusted as follows:

Step 1—From Table 6, sum the index level for the month of December 1997 through September 1998.
10.91945

Step 2—Divide the results from Step 1 by the number of months in the short period.
10.91945÷10=1.091945

Step 3—From Table 6, sum the index levels for the months in the common period of October 1997, through September 1998.
13.06926

Step 4—Divide the results from Step 3 by the number of months in the common period.
13.06926÷12=1.089105

Step 5—Divide the results from Step 2 by the results from Step 4.
1.091945÷1.089105=1.002608

Step 6—Apply the results from Step 5 to the published cost limits.

a. Urban Skilled Nursing Labor Portion, $67.91×1.002608=$68.09

b. Urban Skilled Nursing Non-Labor Portion, $19.18×1.002608=$19.23

C. Standardization for Wage Levels

After adjustment by the market basket index, we divided each HHA's per-visit costs into labor and nonlabor portions. The labor portion of costs (77.668 percent as determined by the market basket) represents the employee wage and benefit factor plus the contract services factor from the market basket. We then divided the labor portion of per-visit costs by the wage index applicable to the HHA's location to arrive at an adjusted labor cost.

D. Adjustment for "Outliers"

We transformed all per-visit cost data into their natural logarithms and grouped them by type of service and MSA, NECMA, or non-MSA location, in order to determine the median cost and standard deviation for each group. We then eliminated all "outlier" costs which were all per-visit costs under 10 dollars and per visit costs over 800 dollars, retaining only those per-visit costs within two standard deviations of the median in each service.

E. Basic Service Limit

We calculate a basic service limit equal to 105 percent of the median labor and nonlabor portions of the per-visit costs of freestanding HHAs for each type of service. (See Table 3 in section IX.)

VII. Computing the Adjusted Limit

A. Adjustment of Cost Limits by Wage Index

To arrive at the adjusted limit, which is to be applied to each service furnished by an HHA based on where the service is furnished, the HHA's

intermediary first determines the adjusted labor-related component by multiplying the labor-related component of the limit by the appropriate wage index and by multiplying the adjusted labor-related component by the special labor adjustment for budget neutrality. (See example below and Tables 4a and 4b in section VIII. of this notice.) The sum of the nonlabor component plus the labor-related component is the adjusted limit applicable to the service furnished by the HHA.

Example—Calculation of Adjusted Occupational Therapy Limit for an Occupational Therapy Service Furnished in Dallas, TX by a Freestanding HHA

Labor component (Table 3)	$73.20
Wage index value (Table 4a)	0.9703
Labor portion	$71.03
Special labor adjustment for budget neutrality	1.009
Adjusted labor portion	$71.67
Nonlabor component (Table 3)	$21.00
Adjusted occupational therapy limit	$92.67

B. Adjustment for Reporting Year

If an HHA has a 12-month cost reporting period beginning on or after November 1, 1997, the adjusted per-visit limit for each service is again revised by an adjustment factor from Table 5 that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded rate of monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs that will occur after the date on which the limits become effective.

For example, if the HHA in the example above had a cost reporting period beginning January 1, 1998, its per-visit therapy limit would be further adjusted as follows:

COMPUTATION OF REVISED LIMIT FOR OCCUPATIONAL THERAPY

Adjusted per-visit limit	$92.67
Adjustment factor from Table 5	1.00781
Revised per-visit limit	$93.39

In this example, the revised adjusted per-visit limit for occupational therapy services furnished in Dallas, TX by this HHA for the cost reporting period beginning January 1, 1998, is $93.39 per visit.

If an HHA uses a cost reporting period that is not 12 months in duration, a special calculation of the adjustment factor must be made. This results from the fact that projections are computed to September 30, 1998. This calculation is done using the methodology described in section VII.B.

VIII. Schedule of Limits

The schedule of limits set forth below applies to cost reporting periods beginning on or after October 1, 1997. The intermediaries will compute the adjusted limits using the wage index published in Tables 4a and 4b of section IX. and will notify each HHA they service of its applicable cost per-visit limit for the areas where the HHA furnishes each type of service. Each HHA's aggregate limit cannot be determined prospectively, but depends on each HHA's Medicare visits for each type of service furnished by location of the service for the cost reporting periods subject to this notice.

The HHA costs that are subject to the limits include the cost of medical supplies routinely furnished in conjunction with patient care. Durable medical equipment, orthotics, prosthetics, and other medical supplies directly identifiable as services to an individual patient are excluded from the per-visit costs and are paid without regard to this schedule of limits. (See Chapter IV of the Home Health Agency Manual (HCFA Pub. 11).)

The intermediary will determine the limit for each HHA by multiplying the number of Medicare visits for each type according to the location of where the service is furnished by the HHA, by the respective per-visit cost limit. The sum of these amounts is compared to the HHA's total allowable cost.

Example: HHA X, a freestanding agency located in Richmond, VA, and all its services in the Richmond, VA, MSA furnished 5,000 covered skilled nursing visits, 2,000 physical therapy visits, and 4,000 home health aide visits to Medicare beneficiaries during its 12-month cost reporting period beginning October 1, 1997. The aggregate cost limit for the HHA is calculated as follows:

DETERMINING THE AGGREGATE COST LIMIT

Type of visit	Visits	Nonlabor portion	Adjusted labor portion [1]	Adjusted limit	Aggregate limit
Skilled nursing	5,000	$19.18	$62.71	$81.89	$409,450
Physical therapy	2,000	20.78	67.78	88.56	177,120
Home health aide	4,000	9.35	30.39	39.74	158,960
Total Visits	11,000				
Aggregate cost limit					$745,530

[1] Includes special labor adjustment of 1.009 for budget neutrality.

Before the limits are applied during settlement of the cost report, the HHA's actual costs are reduced by the amount of individual items of cost (for example, administrative compensation and contract services) that are found to be excessive under the Medicare principles of provider payment. That is, the intermediary reviews the various reported costs, taking into account all the Medicare payment principles; for example, the cost guidelines for physical therapy furnished under arrangements (42 CFR 413.106) and the limitation on costs that are substantially out of line with those comparable HHAs (42 CFR 413.9).

TABLE 3.—PER VISIT LIMITS FOR HOME HEALTH AGENCIES

Type of visit	Limit	Labor portion	Nonlabor portion [1]
MSA (NECMA) location:			
Skilled nursing care	$87.09	$67.91	$19.18

TABLE 3.—PER VISIT LIMITS FOR HOME HEALTH AGENCIES—Continued

Type of visit	Limit	Labor portion	Nonlabor portion [1]
Physical therapy	94.18	73.40	20.78
Speech pathology	94.57	73.50	21.07
Occupational therapy	94.20	73.20	21.00
Medical social services	119.76	93.23	26.53
Home health aide	42.26	32.91	9.35
Non-MSA location:			
Skilled nursing care	97.09	79.25	17.84
Physical therapy	103.81	84.49	19.32
Speech pathology	109.94	89.45	20.49
Occupational therapy	111.00	90.25	20.75
Medical social services	149.21	121.56	27.65
Home health aide	42.09	34.34	7.75

[1] Nonlabor portion of limits for HHAs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands are increased by multiplying them by the following cost-of-living adjustment factors:

Location	Adjustment factor
Alaska	1.150
Hawaii:	
County of Honolulu	1.225
County of Hawaii	1.150
County of Kauai	1.200
County of Maui	1.225
County of Kalawao	1.225
Puerto Rico	1.100
Virgin Islands	1.125

IX. Wage Indexes

TABLE 4a—WAGE INDEX FOR URBAN AREAS

Urban Area (Constituent Counties or County Equivalents)	Wage Index
0040 Abilene, TX	0.8287
Taylor, TX	
0060 Aguadilla, PR	0.4188
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9772
Portage, OH	
Summit, OH	
0120 Albany, GA	0.7914
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8480
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9309
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.8162
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	1.0086
Carbon, PA	
Lehigh, PA	
Northampton, PA	

TABLE 4a—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index
0280 Altoona, PA	0.9137
Blair, PA	
0320 Amarillo, TX	0.9425
Potter, TX	
Randall, TX	
0380 AK Anchorage, AK	1.2842
Anchorage,	
0440 Ann Arbor, MI	1.1785
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8266
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.8996
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4218
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9072
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9087
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	0.9823
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	

TABLE 4a—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Clayton, GA	
Cobb, GA	
Coweta, GA	
DeKalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City-Cape May, NJ	1.1155
Atlantic City, NJ	
Cape May, NJ	
0600 Augusta-Aiken, GA-SC	0.9333
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9133
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	1.0014
Kern, CA	
0720 Baltimore, MD	0.9689

TABLE 4a—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
0733 Bangor, ME	0.9478
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.4291
Barnstable, MA	
0760 Baton Rouge, LA	0.8382
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8593
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.1221
Whatcom, WA	
0870 Benton Harbor, MI	0.8634
Berrien, MI	
0875 Bergen-Passaic, NJ	1.2156
Bergen, NJ Passaic, NJ	
0880 Billings, MT	0.9783
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8415
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8914
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9005
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7695
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.9128
Monroe, IN	
1040 Bloomington-Normal, IL	0.8733
McLean, IL	
1080 Boise City, ID	0.8856
Ada, ID	
Canyon, ID	
1123 Boston-Worcester Lawrence-Lowell-	1.1506
Brockton, MA-NH	
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	1.0015
Boulder, CO	
1145 Brazoria, TX	0.9341
Brazoria, TX	

TABLE 4a—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index
1150 Bremerton, WA	1.0999
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8740
Cameron, TX	
1260 Bryan-College Station, TX	0.8571
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9272
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0142
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4459
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8961
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9013
Natrona, WY	
1360 Cedar Rapids, IA	0.8529
Linn, IA	
1400 Champaign-Urbana, IL	0.8824
Champaign, IL	
1440 Charleston-North Charleston, SC	0.8807
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1450 Charleston, WV	0.9142
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC-SC	0.9710
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	0.9051
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN-GA	0.8658
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.7555
Laramie, WY	
1600 Chicago, IL	1.0860
Cook, IL	
DeKalb, IL	
DuPage, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	

TABLE 4a—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index
1620 Chico-Paradise, CA	1.0429
Butte, CA	
1640 Cincinnati, OH-KY-IN	0.9474
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN-KY	0.7852
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9804
Ashtabula, OH	
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Loraln, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9316
El Paso, CO	
1740 Columbia, MO	0.9001
Boone, MO	
1760 Columbia, SC	0.9192
Lexington, SC	
Richland, SC	
1800 Columbus, GA-AL Russell, AL	0.8288
Chattanoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9793
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8945
Nueces, TX	
San Patricio, TX	
1900 Cumberland, MD-WV	0.8822
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9703
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8146
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Rock Island-Moline, IA-IL	0.8405
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9584

TABLE 4a—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.8375
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8286
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.7915
Macon, IL	
2080 Denver, CO	1.0386
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8837
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0825
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.8070
Dale, AL	
Houston, AL	
2190 Dover, DE	0.9303
Kent, DE	
2200 Dubuque, IA	0.8088
Dubuque, IA	
2240 Duluth-Superior, MN–WI	0.9779
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0632
Dutchess, NY	
2290 Eau Claire, WI	0.8764
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	1.0123
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9081
Elkhart, IN	
2335 Elmira, NY	0.8247
Chemung, NY	
2340 Enid, OK	0.7962
Garfield, OK	
2360 Erie, PA	0.8862
Erie, PA	
2400 Eugene-Springfield, OR	1.1435
Lane, OR	
2440 Evansville-Henderson, IN-KY	0.8641
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND–MN	0.9937
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8734
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.7461
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ–UT	0.9115
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.1171
Genesee, MI	
2650 Florence, AL	0.7551
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8711
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0248
Larimer, CO	
2680 Ft. Lauderdale, FL	1.0448
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.8788
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	1.0257
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR–OK	0.7769
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.8765
Okaloosa, FL	
2760 Fort Wayne, IN	0.8901
Adams, IN	
Allen, IN	
DeKalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX	0.9979
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0607
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8815
Etowah, AL	
2900 Gainesville, FL	0.9616
Alachua, FL	
2920 Galveston-Texas City, TX	1.0564
Galveston, TX	
2960 ary, IN	0.9633
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8386
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8443
Wayne, NC	
2985 Grand Forks, ND–MN	
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9090
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	1.0147
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8803
Cascade, MT	
3060 Greeley, CO	1.0097
Weld, CO	
3080 Green Bay, WI	0.9097
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9351
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9064
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9059
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9681
Washington, MD	
3200 Hamilton-Middletown, OH	0.8767
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	1.0187
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.2562
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7192
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.8686
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1816
Honolulu, HI	
3350 Houma, LA	0.7854
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9855
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV–KY–OH	0.9160
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8485
Limestone, AL	
Madison, AL	

TABLE 4a—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index
3480 Indianapolis, IN	0.9848
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9413
Johnson, IA	
3520 Jackson, MI	0.9052
Jackson, MI	
3560 Jackson, MS	0.7760
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.8522
Madison, TN	
Chester, TN	
3600 Jacksonville, FL	0.8969
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.6973
Onslow, NC	
3610 Jamestown, NY	0.7552
Chautauqua, NY	
3620 Janesville-Beloit, WI	0.8824
Rock, WI	
3640 Jersey City, NJ	1.1412
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN-VA	0.9114
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8378
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7443
Craighead, AR	
3710 Joplin, MO	0.7510
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0668
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.8653
Kankakee, IL	
3760 Kansas City, KS-MO	0.9564
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9196
Kenosha, WI	
3810 Killeen-Temple, TX	1.0252
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8831
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.8416
Howard, IN	
Tipton, IN	
3870 La Crosse, WI-MN	0.8749
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8206
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.9174
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7776
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.8806
Polk, FL	
4000 Lancaster, PA	0.9481
Lancaster, PA	
4040 Lansing-East Lansing, MI	1.0088
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.7325
Webb, TX	
4100 Las Cruces, NM	0.8646
Dona Ana, NM	
4120 Las Vegas, NV-AZ	1.0592
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8608
Douglas, KS	
4200 Lawton, OK	0.9045
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9536
Androscoggin, ME	
4280 Lexington, KY	0.8390
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9185
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9231
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8490
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8613
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.2232
Los Angeles, CA	
4520 Louisville, KY-IN	0.9507
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8400
Lubbock, TX	
4640 Lynchburg, VA	0.8228
Amherst, VA	
Bedford, VA	
Bedford City, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.9227
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0055
Dane, WI	
4800 Mansfield, OH	0.8639
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4475
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8371
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0354
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.8819
Brevard, Fl	
4920 Memphis, TN-AR-MS	0.8589
Crittenden, AR	
DeSoto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	1.0947
Merced, CA	
5000 Miami, FL	0.9859
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.1059
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ1	
5080 Milwaukee-Waukesha, WI	0.9819
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	

TABLE 4a—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index
5120 Minneapolis-St. Paul, MN-WI	1.0733
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5160 Mobile, AL	0.8455
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0794
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.0934
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8414
Ouachita, LA	
5240 Montgomery, AL	0.7671
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.9173
Delaware, IN	
5330 Myrtle Beach, SC	0.8072
Horry, SC	
5345 Naples, FL	1.0109
Collier, FL	
5360 Nashville, TN	0.9182
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.3807
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Danbury-Waterbury, CT	1.2618
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.2013
New London, CT	
5560 New Orleans, LA	0.9566
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John Baptist, LA	
St. Tammany, LA	
5600 New York, NY	1.4449
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1980
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY–PA	1.1283
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA–NC	0.8316
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.5068
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9032
Marion, FL	
5800 Odessa-Midland, TX	0.8660
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8481
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0901
Thurston, WA	
5920 Omaha, NE–IA	0.9421
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1605
Orange, CA	
5960 Orlando, FL	0.9397
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.7480
Daviess, KY	
6015 Panama City, FL	0.8337
Bay, FL	
6020 Parkersburg-Marietta, WV–OH	0.8046
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8193
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8571
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA–NJ	1.1398
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	0.9606
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7826
Jefferson, AR	0.7826
6280 Pittsburgh, PA	0.9725
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0960
Berkshire, MA	1.0960
6340 Pocatello, ID	0.9586
Bannock ID	
6360 Ponce, PR	0.4589
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9627
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR-WA	1.1344
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.1049
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Statewide, RI	
6520 Provo-Orem, UT	1.0073
Utah, UT	
6560 Pueblo, CO	0.8450
Pueblo, CO	
6580 Punta Gorda, FL	0.8725
Charlotte, FL	
6600 Racine, WI	0.8934
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9818
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	

TABLE 4a—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8345
Pennington, SD	
6680 Reading, PA	0.9516
Berks, PA	
6690 Redding, CA	1.1790
Shasta, CA	
6720 Reno, NV	1.0768
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	0.9918
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9152
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1307
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8402
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.0502
Olmsted, MN	
6840 Rochester, NY	0.9524
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.9081
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9029
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.2202
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9564
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9544
Benton, MN	
Steams, MN	
7000 St. Joseph, MO	0.8366
Andrews, MO	
Buchanan, MO	
7040 St. Louis, MO-IL	0.9130
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
7080 Salem, OR	0.9935
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4513
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9857
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.7780
Tom Green, TX	
7240 San Antonio, TX	0.8499
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.2193
San Diego, CA	
7360 San Francisco, CA	1.4180
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.4332
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4625
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1374
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0688
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.4187
Santa Cruz, CA	
7490 Santa Fe, NM	1.0332
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.2815
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9757
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.8638
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton—Wilkes-Barre—Hazleton, PA	0.8539
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.1339
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.8783
Mercer, PA	
7620 Sheboygan, WI	0.7862
Sheboygan, WI	
7640 Sherman-Denison, TX	0.8499
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.9381
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA-NE	0.8031
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.8712
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9868
St. Joseph, IN	
7840 Spokane, WA	1.0486
Spokane, WA	
7880 Springfield, IL	0.8713
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.7989
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0740
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.9635
Centre, PA	
8080 Steubenville-Weirton, OH-WV	0.8645
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.1496
San Joaquin, CA	
8140 Sumter, SC	0.7842
Sumter, SC	

TABLE 4a—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index
8160 Syracuse, NY	0.9464
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1016
Pierce, WA	
8240 Tallahassee, FL	0.8832
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	0.9103
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8614
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8664
Miller, AR	
Bowie, TX	
8400 Toledo, OH	1.0390
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9438
Shawnee, KS	
8480 Trenton, NJ	1.0380
Mercer, NJ	
8520 Tucson, AZ	0.9180
Pima, AZ	
8560 Tulsa, OK	0.8074
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8187
Tuscaloosa, AL	
8640 Tyler, TX	0.9567
Smith, TX	
8680 Utica-Rome, NY	0.8398
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3754
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.0946
Ventura, CA	
8750 Victoria, TX	0.8474
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0110
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	0.9924
Tulare, CA	
8800 Waco, TX	0.7696
McLennan, TX	
8840 Washington, DC–MD–VA–WV	1.0911
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8640
Black Hawk, IA	
8940 Wausau, WI	1.0545
Marathon, WI	
896 West Palm Beach-Boca Raton, FL	1.0372
Palm Beach, FL	
9000 Wheeling, OH–WV	0.7707
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9403
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.7646
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8548
Lycoming, PA	
9160 Wilmington-Newark, DE–MD	1.1538
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9322
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0102
Yakima, WA	
9270 Yolo, CA	1.1431
Yolo, CA	
9280 York, PA	0.9415
York, PA	
9320 Youngstown-Warren, OH	0.9937
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0324
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.9732
Yuma, AZ	

*Large Urban Area.

TABLE 4b.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7260
Alaska	1.2302
Arizona	0.7989
Arkansas	0.6995
California	0.9977
Colorado	0.8129
Connecticut	1.2617
Delaware	0.8925
Florida	0.8838
Georgia	0.7761
Hawaii	1.0229
Idaho	0.8221
Illinois	0.7644
Indiana	0.8161
Iowa	0.7391
Kansas	0.7203
Kentucky	0.7772
Louisiana	0.7383
Maine	0.8468
Maryland	0.8617
Massachusetts	1.0718
Michigan	0.8923
Minnesota	0.8179
Mississippi	0.6911
Missouri	0.7205
Montana	0.8302
Nebraska	0.7401
Nevada	0.8914
New Hampshire	0.9717
New Jersey [1]	.....
New Mexico	0.8070
New York	0.8401
North Carolina	0.7937
North Dakota	0.7360
Ohio	0.8434
Oklahoma	0.7072
Oregon	0.9975
Pennsylvania	0.8421
Puerto Rico	0.3939
Rhode Island [1]	.....
South Carolina	0.7921
South Dakota	0.6983
Tennessee	0.7353
Texas	0.7404
Utah	0.8926
Vermont	0.9314
Virginia	0.7782
Washington	1.0221
West Virginia	0.7938
Wisconsin	0.8471
Wyoming	0.8247

[1] All counties within the State are classified urban.

TABLE 5.—COST REPORTING YEAR ADJUSTMENT FACTOR [1]

If the HHA cost reporting period begins	The adjustment factor is
November 1, 1997	1.00260
December 1, 1997	1.00521
January 1, 1998	1.00781
February 1, 1998	1.01042
March 1, 1998	1.01302
April 1, 1998	1.01563
May 1,1998	1.01823
June 1, 1998	1.02086

TABLE 5.—COST REPORTING YEAR ADJUSTMENT FACTOR[1]—Continued

If the HHA cost reporting period begins	The adjustment factor is
July 1, 1998	1.02353
August 1, 1998	1.02626
September 1, 1998	1.02901

[1] Based on compounded projected market basket inflation rates.

Source: The Home Health Agency Input Price Index, produced by HCFA for the period between 1983:1 and 2008:4. The forecasts are from Standard and Poor's DRI 3rd QTR 1997; @USSIM/TREND25YR0897@CISSIM/Control973 forecast exercise which has historical data through 1997:2.

These adjustment factors are subject to change based on later estimates of cost increases.

If, for any reason, we do not publish a new schedule of limits to be effective on October 1, 1998 or do not announce other changes in the current schedule by that date, the current limits will continue in effect. Intermediaries will be notified of the adjustment factors to be applied until a new schedule of limits or other provision is issued.

TABLE 6.—MONTHLY INDEX LEVELS FOR CALCULATING INFLATION FACTORS TO BE APPLIED TO HOME HEALTH AGENCY COST LIMITS

Month	Index level
October 1997	1.07348
November 1997	1.07633
December 1997	1.07948
January 1998	1.08263
February 1998	1.08580
March 1998	1.08800
April 1998	1.09021
May 1998	1.09242
June 1998	1.09557
July 1998	1.09873
August 1998	1.10189
September 1998	1.10472
October 1998	1.10756
November 1998	1.11041
December 1998	1.11356
January 1999	1.11671
February 1999	1.11988
March 1999	1.12208
April 1999	1.12429
May 1999	1.12650
June 1999	1.13028
July 1999	1.13406
August 1999	1.13786
September 1999	1.14070

Source: The Home Health Agency Input Price Index, produced by HCFA for the period between 1983:1 and 2008:4. The forecasts are from DRI's 3rd QTR 1997; @USSIM/TREND25YR0897@CISSIM/Control973 forecast exercise which has historical data through 1997:2.

X. Regulatory Impact Statement

A. Introduction

HCFA has examined the impacts of this notice with comment period as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities. However, most providers, physicians, and health care suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually.

We estimate that the impact of this notice with comment period will be to decrease payments to home health agencies by approximately $570 million in FY 1998, compared to the payment that would have been made in FY 1998 if BBA '97 had not been enacted. Therefore, this notice is a major rule as defined in Title 5, United States Code, section 804(2).

It is clear that the changes being made in this document will affect both a substantial number of small HHAs as well as other classes of HHAs, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this notice with comment period, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

B. Changes in the Notice With Comment Period

Several provisions of Public Law 105–33 make significant changes in payments for services provided by HHAs. The provisions that have significant payment impacts for FY 1998 include the following:

- The establishment of the cost per visit limitations be based on 105 percent of the median of the labor-related and nonlabor per visit costs for freestanding HHAs.
- That there be no updates in the home health cost limits for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996.
- The applicable wage index will be from the geographic area in which the home health service is furnished.

C. Effect on Home Health Agencies

The following quantitative analysis presents the projected effects of the statutory changes effective for FY 1998. The sum of the impacts of the individual provisions of the statute do not equal the total impact of the provisions when combined due to the interaction of the various provisions. Therefore, the impact section will address total impact in order to avoid confusion.

As discussed below, the impact of this final notice with comment period will decrease payments to HHAs by approximately $570 million in FY 1998 compared to payment that would have been made in FY 1998 if BBA '97 had not been enacted. This notice is necessary to implement the provisions of section 1861(v)(1)(L) of the Act, as amended by BBA '97, these alternatives to the provisions set forth in this notice are not available.

This notice with comment period sets forth a revised schedule of HHA cost limits for cost reporting periods beginning on or after October 1, 1997. In accordance with section 1861(v)(1)(L)(i)(IV) of the Act, as amended by BBA '97, the limits have been set not to exceed 105 percent of the median of the labor-related and nonlabor per-visit costs for freestanding HHAs. As required by section 1861(v)(1)(l)(iii) of the Act, we are using the most recent hospital wage index to calculate the HHA cost limits, that is, the hospital wage index effective for discharges on or after October 1, 1997, which is based on 1994 wage survey data. The wage index is used to adjust the labor-related portions of the limits to reflect differing wage levels among areas. As discussed in section II of this notice, we are applying a budget neutrality adjustment factor of 1.009 to the labor-related portion of the limits to ensure that aggregate payments to HHAs are not affected by the updating of the wage index.

We are using settled cost report data from Medicare cost reports for cost reporting periods ending on or after June 30, 1991, and settled before October 1, 1995, to develop the HHA cost-per visit limit values for each type of home health service: skilled nursing care, physical therapy, speech pathology, occupational therapy, medical social services, and home health aide. The majority of the cost reports were from FY 1993. The data have been adjusted by the most recent market basket factors, excluding market basket increases for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996, to reflect

the expected cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 1998. The intermediary determines the aggregate cost limit for each HHA by multiplying the number of Medicare visits for each type of services furnished by the HHA by the respective per-visit cost limit. Each HHA's aggregate limit cannot be determined prospectively, but depends on each HHA's Medicare visits for each type of service and actual costs for the cost reporting period subject to this notice.

The methodology used to calculate these new limits reflects the changes resulting from the provisions in BBA '97. The projected decrease in payments for home health services provided by HHAs when compared to the projected expenditures under the old cost limits in effect prior to October 1, 1997, updated by the market basket increases since those limits took effect, is approximately $570 million. Projected decreases in payments using this same methodology for fiscal years prior to the implementation of a home health prospective payment system is $990 million in FY 99.

The cost limits for HHAs are statutorily driven and the impact of decreases in payments to HHAs have been reflected in the current law baseline of the mid-session review of the President's FY 98 budget.

We are unable to identify the effects of the changes to the cost limits on individual HHAs. However, Table 7 below illustrates the proportion of HHAs that are likely to be affected by the limits. The results are based on both the data used to determine the limits and all available settled hospital-based cost reports for the same time period:

TABLE 7.—HHAS EXCEEDING THE COST LIMITS BASED ON 105% OF THE MEDIAN OF PER VISIT COSTS FROM FREESTANDING HOME HEALTH AGENCIES

	Number of HHAs in database	Number of HHAs exceeding the limits	Percentage of HHAs exceeding the limits
Total HHAs	4986	3232	65
Urban:			
Freestanding	2220	1252	56
Hospital-based	868	742	85
Rural:			
Freestanding	982	539	55
Hospital-based	916	699	76

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

XI. Other Required Information

A. Waiver of Proposed Notice

We ordinarily publish a proposed notice in the **Federal Register** with a 60-day period for public comment as required under section 1871(b)(1) of the Act. However, section 1871(b)(2)(B) of the Act provides that publication of a proposed notice is not required before the notice takes effect if "a statute establishes a specific deadline for implementation of a provision and the deadline is less than 150 days after the date of the enactment of the statute in which the deadline is contained." In addition, we may waive the 60-day period for public comment if we find good cause that prior notice and comment are impracticable, unnecessary or contrary to the public interest.

On July 1, 1997, we published a notice with comment period addressing the per-visit limits for HHAs for cost reporting periods beginning on or after July 1, 1997. Subsequently, on August 5, 1997, Pub. L. 105–33 was enacted. Pub. L. 105–33 changed certain factors in the calculation of the limit for cost reporting periods beginning on or after October 1, 1997, and added other provisions relating to this limit. These statutory provisions were generally effective for cost reporting periods beginning on or after October 1, 1997.

In accordance with section 1871(b)(2)(B) of the Act, publication of a proposed notice with prior comment period is not required before implementing the statutory provisions of Pub. L. 105–33 that take effect for cost reporting periods beginning on or after October 1, 1997. In addition, as discussed in section III above, in accordance with the statute, we have used the same methodology to develop the schedule of limits that was used in setting the limits effective for cost reporting periods beginning on or after July 1, 1996. The cost limits have been updated by the appropriate market basket adjustment factor to reflect the cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 1998. Moreover, as required under section 1861(v)(1)(L)(iii) of the Act, we have updated the wage index using the most recent hospital wage index. Therefore, we believe that in this instance, it would be impracticable and unnecessary to publish a proposed notice and find good cause to waive publication of a proposed notice. However, we are providing a 60-day period for public comment on these provisions.

B. Waiver of 30-day Delay in Effective Date

Generally, the Administrative Procedure Act requires us to provide a 30-day delay before effectuation of a final rule unless we find good cause to dispense with that delay. 5 U.S.C. section 553(d). To the extent this requirement applies to this Notice with comment, we find good cause to waive the 30-day delay in effective date.

As noted previously, these per-visit cost limits are effective for cost reporting periods beginning on or after October 1, 1997. Section 1861(v)(1)(L)(vii) of the Act requires the Secretary to establish there per-visit cost limits by January 1, 1998 and requires that they apply to cost reporting periods beginning on or after October 1, 1997. That statutory requirement is clear. A 30-day delay in implementing these cost limits is unnecessary. Therefore, we find that it is unnecessary to provide for a 30-day delay in effective date and find good cause to waive the delay in effective date.

C. Effect of the Contract with America Advancement Act, Pub. L. 104–121

Normally, under 5 U.S.C. § 801, as added by § 251 of Pub. L. No. 104–121, the effective date of a major rule is

delayed 60 days for Congressional review. This has been determined to be a major rule under title 5, United States Code, section 804(2). However, as indicated in section XI.A of the preamble to this notice with comment period, for good cause, we find that prior notice and comment procedures are impracticable and unnecessary. Pursuant to 5 U.S.C. section 808(2), a major rule shall take effect at such time as the Federal agency promulgating the rule determines if for good cause it finds that notice and public procedure is impracticable or unnecessary. Accordingly, under the exemption provided in 5 U.S.C section 808(2), this schedule of limits is effective for cost reporting periods beginning on or after October 1, 1997.

D. Public Comments

Because of the large number of items of correspondence we normally receive on a notice with comment period, we are not able to acknowledge or respond to them individually. However, we will consider all comments concerning the provisions of this notice that we receive by the date and time specified in the "Dates" section of this notice, and we will respond to those comments in a subsequent notice.

Authority: Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)); section 4207(d) of Pub. L. 101–508 (42 U.S.C. 1395x (note)).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance)

Dated: December 8, 1997.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: December 22, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–34221 Filed 12–31–97; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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 National Center for Research Resources Special Emphasis Panel (SEP) meeting:

Name of SEP: Biomedical Research Technology (Telephone Conference Call).

Date: January 16, 1998.

Time: 11 a.m.

Place: National Institutes of Health, 6507 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965.

Contact Person: Dr. Bela Gulyas, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0820.

Purpose/Agenda: To evaluate and review grant applications. This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.371, Biomedical Research Technology, National Institutes of Health, HHS)

Dated: December 23, 1997.

LaVeen M. Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 97–34151 Filed 12–31–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; National Advisory Child Health and Human Development Council and its Subcommittee on Planning and Policy, Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council on January 26–27, 1998. The meeting will be held in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. The Subcommittee on Planning and Policy will be held on January 26, 1998, in Building 31, room 2A03, from 8:00 a.m. to 9:00 a.m. The Subcommittee meeting will be open to the public and the agenda includes program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

The Council meeting will be open to the public on January 26 from 9:00 a.m. until 5:30 p.m. The agenda includes reports by the Director, NICHD and the Developmental Biology, Genetics and Teratology Branch, observance of the Institute's thirty-fifth anniversary, and other business of the Council. The meeting will be open on January 27 upon completion of the review of applications at approximately 1:00 p.m. to adjournment if any policy issues are raised which need further discussion.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and section 10(d) of Public Law 92–463, the meeting of the full Council will be disclosed to the public on January 27 from 8:00 a.m. to approximately 1:00 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Executive Secretary, NACHHD Council, 6100 Executive Boulevard, Room 5E01, National Institutes of Health, Bethesda, Maryland 20892–7510, Area Code 301, 594–7232, will provide a summary of the meeting and a roster of Council members as well as substantive program information. Individuals who plan to attend the open session and need special assistance, such as sign interpretation or other reasonable accommodations, should contact Ms. Plummer.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research, and 93.865, Research for Mothers and Children], National Institutes of Health)

Dated: December 23, 1997.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 97–34148 Filed 12–31–97; 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 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 of the National Institute of Mental Health Special Emphasis Panel:

Agenda Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: January 5, 1998.
Time: 3 p.m.
Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Gloria B. Levin, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–1340.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: December 23, 1997.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 97–34150 Filed 12–31–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–36]

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.

EFFECTIVE DATE: January 2, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD 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 the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 22, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–33730 Filed 12–31–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Rio Grande Silvery Minnow (Hybognathus amarus) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the Rio Grande silvery minnow, (*Hybognathus amarus*). The species currently occurs in only 10 percent of the historic range, 180 miles of the Rio Grande in New Mexico between Cochiti Lake and Elephant Butte Reservoir. Historically, the species occurred from Espanola in north central New Mexico downstream to the Gulf of Mexico on the main stem of the Rio Grande, and from Santa Rosa, New Mexico to the confluence with the Rio Grande in the Pecos River. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before April 2, 1998 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may examine a copy by contacting Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, New Mexico, 87113, telephone (505) 761–4525. Written comments and materials regarding the plan should also be addressed to the same address above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Jeffery C. Whitney, U.S. Fish and Wildlife Service (see **ADDRESSES**) at (505) 761–4525.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the native species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for down listing or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The silvery minnow was listed as endangered on July 18, 1994. This Recovery Plan is the product of considerable biological and hydrological data developed by a team of scientists, agency personnel, stakeholders from the management community, Native American community and conservation organizations. It includes scientific information about the species and provides management procedures for protecting its habitat and expanding its range and abundance to the extent that no natural or man-caused disturbance will result in irrevocable losses.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(F).

Dated: December 23, 1997.

Nancy M. Kaufman,

Regional Director, Region 2, Fish and Wildlife Service.

[FR Doc. 97–34154 Filed 12–31–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–340–7123–00–6019]

Notice of Closure, Public Lands

AGENCY: Bureau of Land Management, Interior, Clear Lake Field Office, Ukiah, California.

ACTION: Closure of Public Lands.

SUMMARY: In accordance with Title 43, Code of Federal Regulations, subpart 8364, notice is hereby given that the below described public lands in the Cow Mountain area of Lake County are temporarily closed to public access and use. The closure will be in effect upon publication of this notice and will remain in effect for one year. Lands closed are described as follows:

All that real property situated in the County of Lake, State of California, described as follows:

The northwest quarter (NW¼), the southwest quarter of the northeast quarter (SW¼NE¼) and the north half of the southeast quarter (N½SE¼) of Section 9, the southwest quarter of the southeast quarter (SW¼SE¼), the south half of the southwest quarter (S½SW¼), and the northwest quarter of the southwest quarter (NW¼SW¼) of Section 10, Township 14 North, Range 11 West, Mount Diablo Meridian, Lake County, California.

Excepting from the northwest quarter (NW¼) of said Section 9, all that portion described as lying along the north line of the northwest quarter of the northwest quarter (NW¼NW¼) of Section 9, Township 14 North, Range 11 West, MDM; beginning 650 feet east of the northeast corner of 8-Mile Valley Ranch; running east along the north line 1320 feet; thence south 100 feet; thence west 1320 feet; thence north 100 feet to the point of beginning. This closure is necessary to protect persons, property, and public lands and resources.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management's Clear Lake Field Office recently acquired the above described lands. As part of the agreement conveying the lands to the public and to BLM management, the former owners retained one year to vacate the property and remove personal belongings. The BLM Clear Lake Field Office will be amending the South Cow Mountain Management Plan to include provisions for managing these lands, before opening them for public use. Additionally, several roads and structures are in disrepair and unsafe for public use. These roads must be repaired before the area is opened for public use.

FOR ADDITIONAL INFORMATION: Contact Richard Burns, Field Manager, Bureau of Land Management Clear Lake Field Office, 2550 North State Street, Ukiah, CA 95482.

Philip L. Damon,

Acting Field Manager.

[FR Doc. 97–34210 Filed 12–31–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–050–1150–04]

Notice—Bat Hibernation Site (Hibernacula) Closure

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice—bat hibernation sites (*hibernacula*) closure.

SUMMARY: Pursuant to 43 CFR 8364.1, eleven caves in the Upper Snake River Districts are identified as bat hibernation sites (*hibernacula*) are seasonally closed to entry. With the exception of approved research, essential search and rescue, or other emergency or administrative operations for cave resources protection, eleven caves containing hibernation sites are closed during the hibernation season to all visitation, from October 15 to May 1.

Affected caves are listed below:

Bobcat Cave
Kids Cave
Owl Cave
Chalk Cave
Giant Arch Cave
Gypsum Cave
Little Arch Cave
Pot O' Gold Cave
Twin Cave
Will's Cave
The One That Goes Cave

The purpose of the closure is to protect bat species and their habitat during the critical hibernation period. Any person who fails to comply with this closure and restriction order, under 43 CFR 8364.1, may be subject to the penalties provided in regulations at 43 CFR 8360.0–7; a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

DATES: This action is effective December 18, 1997.

ADDRESSES: The Federal Cave Resources Protection Act of 1988 prohibits disclosure of cave locations. Information pertaining to the above closure is available at the Shoshone Resource Area in Shoshone, Idaho, and the Idaho Falls District Office in Idaho Falls, Idaho.

FOR FURTHER INFORMATION CONTACT: Paula Call, BLM Shoshone Resource Area, P.O. Box 2–B, Shoshone Idaho 83352, telephone (208) 886–7254, or Joe Lowe, BLM Idaho Falls District Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, telephone (208) 524–7558.

SUPPLEMENTARY INFORMATION: Certain caves in the Upper Snake River Districts serve as critical winter habitat for bats because they provide a narrow yet optimum range of temperature and other microclimatical variables required for successful hibernation. Research has indicated that all bat species are extremely susceptible and sensitive to human disturbance during hibernation, and that recreational caving trips during the hibernation season are detrimental to the survival of bat species.

Dated: December 19, 1997.

Bill Baker,

Shoshone Resource Area Manager.

[FR Doc. 97–34209 Filed 12–31–97; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1430–10]

Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management, Winnemucca District, intends to develop an Activity Plan/Land Use Plan amendment for the Black Rock Desert located in the northwest portion of the district. The purpose of the plan and amendment is to better manage the resources and increasing level of activities occurring on the desert. Currently the Black Rock region reflects very few man-made developments and contains pristine sections of the Applegate/Lassen National Historic Trail. Competitive events and commercial uses of desert have increased tremendously since the original Management Framework Plan was completed in 1982. Plan goals include (1) Managing the varied resources while providing for a wide range of dispersed recreational activities and opportunities in a prudent manner; (2) Providing economic opportunities

and other human values with a sustainable, healthy ecosystem.

During July, 1997, five public scoping meetings were held to gather public input as to their concerns and suggestions for the Black Rock Desert. Input gathered from these meetings will be used to develop the objectives for the plan and to formulate the alternatives for the environmental assessment leading to the amendment of the Land Use Plan.

DATES: A public comment period on the forthcoming Draft Plan Amendment will be announced in the spring of 1998.

ADDRESSES: Written comments should be addressed to: Ron Wenker, District Manager, Winnemucca District Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445.

FOR FURTHER INFORMATION CONTACT: Mike Bilbo, Recreation Specialist, Winnemucca District Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445, (702) 623–1500.

Dated: December 17, 1997.

Ron Wenker,

District Manager.

[FR Doc. 97–34185 Filed 12–31–97; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–930–03–1220–00: 8365]

Establishment of Supplementary Rules for Recreational Mineral Collection on Lands Administered by Bureau of Land Management, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In title 43 of the Code of Federal Regulations, § 8365.1–5 establishes rules of conduct in regard to property and resources managed by the Bureau of Land Management. Section 8365.1–5(b) establishes that it is permissible to collect from the public lands "reasonable amounts" of certain resources for personal use. This action establishes the standards for "reasonable limits" for the recreational collecting of rocks, mineral specimens, common invertebrate fossils, semi-precious gemstones, and petrified wood, as well as summarizes existing rules found in above referenced citation. Recreational Mineral Collecting is commonly called "rockhounding."

EFFECTIVE DATE: February 2, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Buff, Senior Minerals Specialist, or Terry O'Sullivan, Senior Recreation Specialist, Arizona State Office, 222 N. Central Avenue, Phoenix, Arizona, 85004: Telephone (602) 417–9200.

SUPPLEMENTARY INFORMATION: To protect valuable and fragile natural and cultural resources and to provide for public enjoyment, the following supplementary rule is provided.

Rocks, minerals, semiprecious gemstones and petrified wood may be collected on public lands administered by the Arizona Bureau of Land Management (BLM) without charge or permit as long as you collect reasonable amounts of specimens.

1. Arizona BLM sets the "reasonable" limits for personal use as up to 25 pounds per day, plus one piece, with a total limit of 250 pounds per year. These limits are for rocks, mineral specimens, common invertebrate fossils, semi-precious gemstones, and petrified wood.

2. A group of people does not pool their yearly allotment to collect a piece larger than 250 pounds of either rockhounding specimens or petrified wood. Authority to establish supplementary rules is 43 CFR 8365.1–6 and violation of these rules are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months (43 CFR 8360.0–7).

ADDITIONAL INFORMATION: BLM Arizona has developed a brochure which will be available at local BLM offices, containing these supplementary rules and other regulations found in 43 CFR 8365.1–5 pertaining to Recreational Mineral Collecting. Rocks, mineral specimens, common invertebrate fossils, semi-precious gemstones, and petrified wood may be collected on public lands administered by the Arizona Bureau of Land Management (BLM) without charge or permit as long as:

1. The specimens are for personal use and are not being collected for commercial purposes or bartered to commercial dealers.

2. Collection does not occur in developed recreation sites or areas, unless designated as a rockhounding area by the BLM.

3. Collection is not prohibited or restricted and posted.

4. Collection, excavation or removal are not aided with motorized or mechanical devices, including heavy equipment or explosives. Metal detectors are acceptable, with the exception of the San Pedro National Conservation Area.

5. No undue or unnecessary degradation of the public lands occurs during the removal of rock, minerals, or gemstones.

6. For pieces of petrified wood heavier than 250 pounds or situations not covered in the above rules or regulations, please contact the local BLM office.

7. In addition, if you are planning to use a suction dredge:

(a) It is required that you receive permission from the Army Corps of Engineers prior to using any suction dredge [Telephone: Phoenix: (602) 640–5385; Tucson: (520) 670–5021];

(b) It is required that you contact the local BLM office if the suction dredge has an intake of 4 inches or larger;

(c) It is recommended that you contact the local BLM office if the suction dredge has an intake of less that 4 inches.

Dated: December 23, 1997.

Gary D. Bauer,

Associate State Director.

[FR Doc. 97–34152 Filed 12–31–97; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(NM–930–1310–01); (NMNM 89139)]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NMNM 89139 for lands in Eddy County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from September 1, 1997, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective September 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Gloria S. Baca, BLM, New Mexico State Office (505) 438–7566.

Dated: December 23, 1997.

Gloria S. Baca,

Land Law Examiner.

[FR Doc. 97–34213 Filed 12–31–97; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–01; IDI–32319]

Public Land Order No. 7306; Withdrawal of National Forest System Lands for Howell Canyon Recreation Complex; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 3,805.87 acres of National Forest System lands from mining for a period of 20 years for the Forest Service to protect the Howell Canyon Recreation Complex. The lands have been and will remain open to surface entry and mineral leasing.

EFFECTIVE DATE: January 2, 1998.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3864.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from the general land laws or mineral leasing laws, to protect the Howell Canyon Recreation Complex:

Boise Meridian

T. 12 S., R. 24 E.,
sec. 36, SW¼NW¼, W½SW¼, and S½SE¼.
T. 12 S., R. 25 E.,
sec. 31, lot 4, NE¼NE¼, SW¼NE¼, W½SE¼NE¼, SE¼SW¼, and SE¼;
sec. 32, S½SE¼SW¼NW¼, SE¼NW¼, and N½SW¼.
T. 13 S., R. 24 E.,
sec. 1, N½ lot 1, lots 2 to 4 inclusive, S½NW¼ and SW¼;
sec. 2;
sec. 3, lots 1 to 4 inclusive, S½N½, N½S½, SW¼SW¼, and SE¼SW¼;
sec. 4, lots 1 and 2, S½NE¼ and S½;
sec. 5, SE¼;
sec. 9, NE¼, E½NW¼, NW¼NW¼, NE¼SW¼, and N½SE¼;
sec. 10, W½NW¼;
sec. 11, NE¼;
sec. 12, NW¼.

The areas aggregate 3,805.87 acres in Cassia County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: December 17, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–34205 Filed 12–31–97; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–0777–63; GP6–252; OR–19150]

Public Land Order No. 7305; Revocation of Secretarial Order dated November 14, 1927; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in its entirety a Secretarial order which withdrew 40.46 acres of National Forest System land for the Bureau of Land Management's Powersite Classification No. 193. The land is no longer needed for the purpose for which it was withdrawn. This action will open the land to such forms of disposition as may by law be made of National Forest System land. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: February 2, 1998.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated November 14, 1927, which established Powersite Classification No. 193, is hereby revoked in its entirety:

Willamette Meridian

Rogue River National Forest

T. 39 S., R. 1 E.,
sec. 29, lot 1.

The area described contains 40.46 acres in Jackson County.

2. At 8:30 a.m. on February 2, 1998, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: December 17, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–34207 Filed 12–31–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–00; N–59080]

Notice of Realty Action: Lease/conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, DOI.

ACTION: Recreation and Public Purpose Lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use the land for a park site, in conjunction with the existing Oakey Detention Basin (N–37225).

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Section 2: N½NE¼SW¼, SE¼NE¼SW¼
Containing 30 acres, more or less.

The land is not required for any (federal purpose). The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under

applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. An easement (Parcel 1: Torrey Pines & Redwood) North 40 feet, the East 40 feet and the West 30 feet of the North Half of the Northeast Quarter of the Southwest Quarter of said Section 2.

2. An easement (Parcel 2: SW Corner Oakey & Torrey Pines) A triangular parcel of land bounded as follows: bounded on the North by the South line of the North 40 feet of the North Half of the Northeast Quarter of the Southwest Quarter of said Section 2; bounded on the East by the West line of the East 40 feet of said North Half of the Northeast Quarter of the Southwest Quarter; and bounded on the Southwest by the arc of a circle concave Southwesterly, having a radius of 25 feet and being tangent to the South line of said North 40 feet and tangent to the West line of said East 40 feet.

3. An easement (Parcel 3: SE Corner Oakey & Redwood) A triangular parcel of land bounded as follows: bounded on the North by the South line of the North 40 feet of the North Half of the Northeast Quarter of the Southwest Quarter of said Section 2; bounded on the West by the East line of the West 30 feet of said North Half of the Northeast Quarter of the Southwest Quarter and bounded on the southeast by the arc of a circle concave Southeasterly, having a radius of 20 feet and being tangent to the South line of said North 40 feet and tangent to the East line of said West 30 feet.

4. An easement (Parcel 4: O'Bannon & Torrey Pines) The South 30 feet and the East 40 feet of the Southeast Quarter of the Northeast of the Southwest Quarter of said Section 2.

5. An easement (Parcel 5: NW Corner O'Bannon & Torrey Pines) A triangular parcel of land bounded as follows: bounded on the South by the North line of the south 30 feet of the Southeast Quarter of the Northeast Quarter of the Southwest Quarter of said section 2; bounded on the East by the West line of the East 40 feet of said Southeast Quarter of the Northeast Quarter of the Southwest Quarter; and bounded on the Northwest by the arc of a circle concave Northwesterly, having a radius of 20 feet and being tangent to the North line of said South 30 feet and tangent to the West line of said East 40 feet. In favor of the City of Las Vegas for roads, public utilities and flood control purposes, as follows:

6. Those rights for a detention basin purposes which have been granted to The City of Las Vegas by Permit Serial No. N–37225 the under the Act of 10–21–1976 (43USC1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposal under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Assistant District Manager Non-Renewable Resources, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a public park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public park.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: December 17, 1997.

Mark R. Chatterton,

Assistant District Manager, Non-Renewable Resources, Las Vegas, NV.

[FR Doc. 97–34211 Filed 12–31–97; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–069–08–1220–00]

Notice of Recreation Use Restrictions for Indian Creek Canyon Corridor

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of recreation use restrictions for Indian Creek Canyon Corridor.

SUMMARY: This notice places restrictions on recreation and vehicle use of the Indian Creek Canyon Corridor and adjacent canyons in the San Juan Resource Area in southeast Utah. Actions are implemented under the authority of 43 CFR 8341, 8364, 8365, and 8372.

FOR FURTHER INFORMATION CONTACT: Robin Fehlau, San Juan Resource Area, P.O. Box 7, Monticello, Utah 84535 at (435) 587–2141.

SUPPLEMENTARY INFORMATION: Increased recreation use of certain public lands in the Indian Creek Canyon Corridor has adversely impacted riparian areas, vegetation, soil, visual, and cultural resources and poses a threat to public safety and enjoyment of these lands. Maps of the areas where these special rules and restrictions apply will be available at the San Juan Resource Area Office.

To reduce damage to natural and cultural resource values and provide for public safety in the Indian Creek Canyon Corridor including Lavender Canyon, Davis Canyon, Harts Draw, Lockhart Basin, and Lockhart Canyon: (1) Motor vehicle and mountain bike travel is restricted to existing roads and trails and indiscriminate damage by off highway vehicle play will be rehabilitated; (2) camping is restricted to either improved recreation sites with facilities for overnight use or designated undeveloped campsites; (3) campsite occupancy may be limited to posted numbers of vehicles and persons, (4) woodgathering within one half mile of a motorized route will be prohibited, (5) campfires within one half mile of a motorized route may only be built in BLM constructed fire rings, designated fire rings or fire pans.

EFFECTIVE DATES: These restrictions are effective as of this date and shall remain in effect pending the completion of the Indian Creek Canyon Corridor Recreation Plan or until updated by the authorized officer.

Dated: December 16, 1997.

Kent Walter,

Area Manager.

[FR Doc. 97–34187 Filed 12–31–97; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–989–1050–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 48 N., R. 64 W., accepted December 22, 1997
T. 53 N., R. 65 W., accepted December 22, 1997
T. 14 N., R. 78 W., accepted December 22, 1997
T. 42 N., R. 116 W., accepted December 22, 1997

Sixth Principal Meridian, Nebraska

T. 27 N., R. 6 E., accepted December 22, 1997
T. 26 N., R. 9 E., accepted December 22, 1997

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: December 22, 1997.

Jerry L. Messick,

Acting Chief, Cadastral Survey Group.

[FR Doc. 97–34215 Filed 12–31–97; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act of 1976

In accordance with Departmental police, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *USX Corporation*, Civil Action No. CV–97–G–3188–S was lodged on December 11, 1997, with the United States District Court for the Northern District of Alabama. USX Corporation owns and operates an integrated steel mill located in Birmingham, Alabama. This action for civil penalties and injunctive relief under Section 3008 (a) and (g) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6928 (a) and (g), was filed against USX on December 11, 1997. The complaint alleged violations of RCRA Sections 3004 and 3005; 42 U.S.C. 6924 and 6925, and the implementing regulations. USX has agreed to pay a civil penalty in the amount of $1 million. Also, USX has agreed to perform two Supplemental Environmental Projects (SEPs) at the U.S. Steel facility in Birmingham, Alabama, at a cost to USX of not less than $1,750,000. In addition, USX has agreed to manage, store and dispose of a spent flush solvent waste generated at the U.S. Steel facility as a hazardous waste and to cease disposing of the spent flush solvent at the Exum Landfill at the U.S. Steel facility; it has agreed to secure and restrict access to the Exum Landfill; and it has agreed to perform corrective action at the facility pursuant to Section 3008(h) of RCRA, 42 U.S.C. 6928(h).

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to: *United States* v. *USX Corporation* DOJ Ref. #90–7–1–802.

The proposed consent decree may be examined at the Office of the United States Attorney, Northern District of Alabama, Room 200, Robert S. Vance Federal Building, 1800 Fifth Avenue, North, Birmingham, Alabama 35203; Office of the U.S. Environmental Protection Agency, Region 4, 61 Forsythe Street, S.E., Atlanta, Georgia 30303; and at the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $12.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–34204 Filed 12–31–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Sunshine Act Meeting

[F.C.S.C. Meeting Notice No. 1–98]

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time:

Monday, January 12, 1998, 9:30 a.m. to 5:00 p.m.
Wednesday, January 14, 1998, 9:30 a.m. to 5:00 p.m.
Friday, January 16, 1998, 9:30 a.m. to 5:00 p.m.
Wednesday, January 21, 1998, 9:30 a.m. to 5:00 p.m.
Friday, January 23, 1998, 9:30 a.m. to 5:00 p.m.

Subject Matter:

(1) Oral Hearings and Hearings on the Record on Objections to Individual Proposed Decisions on Claims of Holocaust Survivors Against Germany; (2) Issuance of Individual Final Decisions on Claims of Holocaust Survivors Against Germany.

Status: Closed.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, December 29, 1997.

Judith H. Lock,

Administrative Officer.

[FR Doc. 97–34229 Filed 12–30–97; 2:49 pm]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Civil Rights Center; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Civil Rights Center within the Office of the Assistant Secretary for Administration and Management is soliciting comments concerning the proposed extension of the collection of the "Compliance Information Report—29 CFR part 31 (Title VI), Nondiscrimination-Disability—29 CFR part 32 (Sec. 504), Nondiscrimination-Job Training Partnership Act—29 CFR part 34 (Section 167)." A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice. In addition, a copy of the ICR in alternate formats of large print and electronic file on computer disk are available upon request.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before March 3, 1998.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Annabelle T. Lockhart, Director, Civil Rights Center, Office of the Assistant Secretary for Administration and Management, Frances Perkins Building, 200 Constitution Ave. NW., Room N–4123, Washington, DC 20210. Ms. Lockhart can be reached at (202) 219–9827 (voice) (this is not a toll-free number) or (800) 326–2577 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background

The Compliance Information Report and its information collection is designated to ensure that programs or activities funded in whole or in part by the Department of Labor operate in a nondiscriminatory manner. The Report requires such programs and activities to collect, maintain and report upon request from the Department, race, sex, age and disability data for program applicants, eligible applicants, participants, terminees, applicants for employment and employees.

II. Current Actions

The Department of Labor seeks an extension of the current OMB approval of the paperwork requirements in the Compliance Information Report. Extension is necessary to ensure nondiscrimination in programs or activities funded in whole or in part by the Department of Labor.

Type of Review: Extension.

Agency: Civil Rights Center, Office of the Assistant Secretary for Administration and Management.

Title: Compliance Information Report—29 CFR part 31 (Title VI), Nondiscrimination-Disability—29 CFR part 32 (Section 504), Nondiscrimination-Job Training Partnership Act—29 CFR part 34 (Section 167)

OMB Number: 1225–0046.

Affected public: Not-for-profit, State, local or Tribal governments.

Respondents	Frequency	Total responses	Average time per response	Burden (hours)
Compliance Information: 38,270,607	Recordkeeping	38,270,607	20 seconds	212,615
Employment Recordkeeping: 117,975	Recordkeeping	117,975	5 seconds	164
Complaint Log: 1139	Recordkeeping	149	3 minutes	8
Compliance Information Reporting: 11	Once	11	16 hours	264
Assurances: 1139	Once	1139	2 minutes	38
Disability Compliance Reports: 11	Once	11	30 minutes	5.5

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintenance): $113,900.00.

Comments submitted in response to this comment request will be summarized and included in the request for Office and Management approval of the information collection request; they will also become a matter of public record.

Signed at Washington, D.C., this 29th day of December, 1997.

Annabelle T. Lockhart,

Director, Civil Rights Center.

[FR Doc. 97–34155 Filed 12–31–97; 8:45 am]

BILLING CODE 4510–23–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 29 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 Determinations 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:

None

Volume II:

None

Volume III:

None

Volume IV:

None

Volume V:

None

Volume VI:

None

Volume VII:

None

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 county.

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 (703) 487–4630.

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 24th Day of December 1997.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–34050 Filed 12–31–97; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 4:00 p.m., Wednesday, December 17, 1997.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., N.W., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices); and (9)(B) (disclosure would significantly frustrate implementation of a proposed Agency action . . .).

MATTERS TO BE CONSIDERED: Budget.

CONTACT PERSON FOR MORE INFORMATION: John J. Toner, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 273–1940.

Dated, Washington, D.C., December 29, 1997.

By direction of the Board:

John J. Toner,

Executive Secretary.

[FR Doc. 97–34230 Filed 12–30–97; 2:56 pm]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

Application for a License to Import Radioactive Waste

Purusant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an import license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, N.W., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

The information concerning the application follows.

NRC IMPORT LICENSE APPLICATION

Name of application; Date of application; Date received application No.	Description of material			Country of origin
	Material type	Total qty.	End use	
Allied Technology Group November 18, 1997 December 9, 1997 IW006	Contaminated condenser tubes.	626,000 kgs	Decontamination and recycling.	Taiwan.

Dated this 23rd day of December 1997 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Director, Division of Nonproliferation, Exports and Multilateral Relations, Office of International Programs.

[FR Doc. 97–34168 Filed 12–31–97; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Northeast Nuclear Energy Company; Notice of Withdrawal of Application for Amendment of Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (NNECO) to withdraw its May 8, 1997, application for proposed amendment to Facility Operating License No. DPR–65 for the Millstone Nuclear Power Station, Unit No. 2, located in New London County, Connecticut.

The proposed amendment would have revised the accuracy requirements of the meteorological instrumentation and supporting Bases. Subsequently, by letter dated November 25, 1997, NNECO withdrew the amendment request based on its determination that the subject instrumentation accuracies can be significantly improved by implementing modifications. It is further indicated that the modifications will result in improving the overall system accuracy such that the existing Technical Specifications for the Millstone Nuclear Power Station, Unit No. 2, will be complied with.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 4, 1997 (62 FR 30634). However, by letter dated November 25, 1997, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 8, 1997, and the licensee's letter dated November 25, 1997, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385.

Dated at Rockville, Maryland, this 16th day of December 1997.

For the Nuclear Regulatory Commission.

Daniel G. McDonald, Jr.,

Sr. Project Manager, Special Projects Office—Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 97–34169 Filed 12–31–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Company; Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR Part 50, Appendix A, General Design Criterion 2, "Design Basis for Protection Against Natural Phenomena," to Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit

Nos. 1 and 2, located in Calvert County, Maryland.

Environmental Assessment

Identification of the Proposed Action

The proposed exemption would allow relief from General Design Criterion 2 (GDC–2) during the upgrading of the Unit 1 emergency diesel generator (EDG) No. 1B. The proposed exemption will permit the temporary removal of two steel doors which provide protection for the EDG No. 1B, which will be out of service to allow modifications which will increase its load capacity, and also provides protection to the operating Calvert Cliffs Unit No. 2 EDG No. 2A and the support systems common to Unit 1 EDG 1B and the operating Unit 2 EDGs 2A and 2B. The support systems are required to be operable to support the operation of Unit 2.

The upgrading of the Unit 1 EDG No. 1B will be performed during the upcoming Unit 1 refueling outage (RFO–14). RFO 14 is scheduled to commence on April 3, 1998, and be completed in early June 1998. The two steel missile doors will be required to be removed about 4 times during the outage. Only one door will be removed at a time. The licensee estimates that each of the removals will last for about 24 hours, which will result in a total removal time of about 100 hours during the scheduled 60-day RFO–14.

The Need for the Proposed Action

The proposed temporary exemption is needed to permit the completion of the highly desirable upgrade to the Unit 1 EDG No. 1B without an unnecessary unit shutdown.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action involves features located entirely within the protected area as defined in 10 CFR Part 20.

The proposed action will not result in an increase in the probability or consequences of accidents or result in a change in occupational or offsite dose. Therefore, there are no radiological impacts associated with the proposed action.

The proposed action will not result in a change in nonradiological plant effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no environmental impacts associated with this action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

The principal alternative to requesting the temporary exemption for implementation of the EDG upgrade would be to comply with the restrictive requirements of GDC–2. However, the alternative would not significantly enhance the protection of the environment and would result in significant loss of power generation since a dual unit outage would be required.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement dated April 1973 for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on October 2, 1997, the staff consulted with the Maryland State official, Richard J. McLean of the Maryland Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 12, 1997, as supplemented November 3, 1997, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 23d day of December 1997.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Acting Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–34170 Filed 12–31–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Workshop: Demonstrating Compliance With the Radiological Criteria for License Termination—Analyses To Demonstrate ALARA, Net Public Harm, Not Technically Achievable, and Prohibitively Expensive

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of workshop.

SUMMARY: The NRC will hold a public workshop in Rockville, Maryland to receive input from licensees and the public on a working paper on "Analyses to Demonstrate ALARA, Net Public Harm, Not Technically Achievable, and Prohibitively Expensive." This working paper is being developed as a section of a future Regulatory Guide, "Demonstrating Compliance With the Radiological Criteria for License Termination." The Regulatory Guide is being written to describe an acceptable method to comply with the NRC's recent final rule on Radiological Criteria for License Termination (62 FR 39058; July 21, 1997). The purpose of the workshop is to obtain comments, suggestions, and information from the public on the approach in the working paper so that a better Regulatory Guide can be developed. All interested licensees and members of the public are invited to attend this workshop.

DATES: The workshop will be held on January 26, 1998, beginning at 9 a.m. and ending at about 5 p.m. There is no pre-registration. Interested parties, unable to attend the workshop, are encouraged to provide written comments by February 6, 1998.

ADDRESSES: The public workshop will be held in the NRC's auditorium at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the workshop site is located adjacent to the White Flint Station on the Metro Red Line. A transcript of this workshop will be available for inspection, and copying for a fee at the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555, on or about February 6, 1998.

Obtaining the Working Paper

A copy of the working paper to be discussed can be obtained electronically at the NRC Technical Conference Forum Website under the topic "Final Rule for License Termination" at http://techconf.llnl.gov/cgi-bin/topics or from the NRC's Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC 20555; telephone 202–634–3273; fax 202–634–3343. To view the working paper at the Website, select "Final Rule on Radiological Criteria for License Termination," then select "Lic Term Document Library," then select "Regulatory Guide," and then select "Module C.4: Regulatory Position—Analyses to Demonstrate ALARA, Net Public Harm, Not Technically Achievable, and Prohibitively Expensive."

Meeting Agenda

9:00 Welcome and introduction.

9:15 Presentation describing the proposed method with opportunity for questions and discussion.

12:00 Lunch.

1:30 Public comments on the proposed working paper. The guide will be considered and commented upon section by section. Attendees will be asked for questions and comments on each section.

5:00 Adjourn.

SUBMITTING WRITTEN COMMENTS: Comments may be posted electronically on the NRC Technical Conference Forum Website mentioned above. Comments submitted electronically can also be viewed at that Website. Comments may also be mailed to the Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: For information or questions on meeting arrangements, contact Jayne McCausland, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–6219, fax 301–415–5385, E-mail: JMM2@NRC.GOV. For technical information or questions, contact Stephen A. McGuire, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–6204; fax: 301–415–5385; E-mail: SAM2@NRC.GOV.

Dated at Rockville, Maryland this 24th day of December, 1997.

For the Nuclear Regulatory Commission.

Frank Cardile,

Acting Chief, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, RES.

[FR Doc. 97–34171 Filed 12–31–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of December 29, 1997, January 5, 12, and 19, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 29

There are no meetings the week of December 29.

Week of January 5—Tentative

There are no meetings the week of January 5.

Week of January 12—Tentative

Thursday, January 15

9:00 a.m. Affirmation Session (PUBLIC MEETING) (if needed)

Week of January 19—Tentative

Wednesday, January 21

10:00 a.m. Briefing on Operating Reactors and Fuel Facilities (PUBLIC MEETING) (Contact: William Dean, 301–415–1726)

2:00 p.m. Briefing on Material Control of Generally Licensed Devices (PUBLIC MEETING) (Contact: Larry Camper, 301–415–7231)

3:30 p.m. Affirmation Session (PUBLIC MEETING)

Friday, January 23

9:00 a.m. Discussion of Interagency Issues (Closed—Ex. 9)

*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.

ADDITIONAL INFORMATION: By a vote of 4–0 on December 18, the Commission determined pursuant to U.S.C. 552b(e) and 10 CFR Sec. 9.107(a) of the Commission's rules that "Affirmation of Louisiana Energy Services—Financial Qualifications Aspects of Petitions for Review of LBP–96–25" be held on December 18, and on less than one week's notice to the public.

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: December 24, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–34225 Filed 12–30–97; 11:38 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Self-Employment Questionnaire.

(2) *Form(s) submitted:* AA–4.

(3) *OMB Number:* 3220–0138.

(4) *Expiration date of current OMB clearance:* 3/31/1998

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 1,000.

(8) *Total annual responses:* 1,000.

(9) *Total annual reporting hours:* 691.

(10) *Collection description:* Section 2 of the Railroad Retirement Act provides for payment of annuities to qualified employees and their spouses. Work for a railroad, work for a "Last Pre-retirement Non-Railroad Employer" (LPE) and work in self-employment affect payment in different ways. This collection obtains information to determine whether claimed self-employment is really self-employment, and not work for a railroad or LPE.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer

(312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–34214 Filed 12–31–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Crown Laboratories, Inc., Common Stock, $.001 Par Value) File No. 1–12848

December 24, 1997.

Crown Laboratories, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Company has complied with Amex Rule 18 by filing with the Exchange a certified copy of the unanimous written consent containing resolutions adopted by the Company's Board of Directors authorizing the withdrawal of the Security from listing and registration on the Amex, and by setting forth in detail to the Exchange the reasons and facts supporting the proposed withdrawal.

On October 16, 1997, the Company's Board of Directors unanimously determined to withdraw the Company's Security from listing and registration on the Emerging Company Marketplace of the Amex. This action was taken while the Company and the Amex were engaged in discussions focusing on whether the Company was in compliance with certain of the Amex's continued listing guidelines. The Company has represented that its Security will continue to trade on the Pacific Exchange, Inc., where the Security has been listed and registered since November 11, 1996.

By letter dated November 11, 1997, the Amex informed the Company that it had no objection to the withdrawal of the Company's Security from listing and registration on the Amex.

By reason of Section 12(b) of the Act and the rules thereunder, the Company shall continue to be obligated to file reports with the Commission and the Pacific Exchange under Section 13 of the Act.

Any interested person may, on or before January 16, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–34192 Filed 12–31–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39483; File No. SR–NASD–97–90]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. ("NASD") Relating to Change of Effective Date of Certain Amendments to the Corporate Governance Documents of the NASD, NASD Regulation, Inc., and the Nasdaq Stock Market, Inc.

December 22, 1997.

Pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act")[1] notice is hereby given that on December 18, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change to the corporate governance documents of the NASD, NASD Regulation, Inc. ("NASD Regulation") and The Nasdaq Stock Market, Inc. ("Nasdaq"), as described in Items I, II, and III below, which Items have been prepared by the Association. This filing was amended on December 19, 1997 and December 22, 1997.[2] The Association has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act, and constituting a stated policy, practice, or interpretation with respect to the meaning of an existing rule under Section 19(b)(3)(A)(i) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(1) and (3) thereunder, the Association is filing a proposed rule change to adjust the effective date of its corporate governance documents (excepting those applicable to nomination and elections procedures), as recently approved by the Commission.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Association 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

[1] 15 U.S.C. 78s(b)(3).

[2] *See* Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq to Katherine A. England, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, dated December 19, 1997 and Letter from Alden Adkins, Vice President and General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, dated December 22, 1997. The changes contained in Amendments Nos. One and Two are consolidated into this Notice. Several additional technical amendments are also included in this Notice. Telephone Conversation between Sharon Zackula, Office of General Counsel, NASD Regulation and Mandy S. Cohen, Office of Market Supervision, Commission (December 22, 1997).

[3] *See* Securities Exchange Act Release No. 39326 (November 14, 1997), 62 FR 25226 (November 21, 1997) (File No. SR–NASD–97–71). The provisions excluded from the amended effective date set forth in this filing are:

NASD By-Laws Article VII, Sections 9(a), 9(e), and 10 through 14;

NASD By-Laws Articles XX and XXI;

NASD Regulations * * * By-Laws Article IV, Section 4.16; and

Nasdaq By-Laws Article IV, Section 4.15.

Association has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose of Rule Change

The Association is filing this rule-filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e) (1) and (3) thereunder, to provide that those amendments to the corporate governance documents currently scheduled to become effective on "the date of the first meeting of the NASD Board of Governors in 1998" [4] be changed to become effective "at the conclusion of the annual meeting of the NASD, which is currently scheduled for January 1998." The annual meeting is currently expected to be held earlier in January 1998 than the meeting of the Board of Governors. This change will allow the corporate governance documents to become effective shortly before the NASD Board meeting, rather than the day of the such meeting. The proposed amendments are necessary to allow for the expedited and smooth transition from the Association's current corporate structure to the new corporate structure recently approved by the Commission.[5]

(2) Statutory Basis of Rule Change

The Association believes that the proposed rule change is consistent with Section 15A(b)(4) of the Act [6] in that it assures a fair representation of its members in the selection of its directors and administration of its affairs and provides that one or more directors shall be representative of issuers and investors and not be associated with a member of the Association, a broker, or a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[4] *See* Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, dated November 12, 1997 ("November 12 Letter"). The November 12 Letter requested various effective dates for the corporate governance amendments contained in Release No. 34–39326.

[5] *See* Release No. 34–39326

[6] 15 U.S.C. 78o–3.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change to amend the effective date of the Association's corporate governance documents was effective upon filing pursuant to section 19(b)(3)(A) (i) and (iii) of the Act and subparagraph (e)(1) and (e)(3) of Rule 19b–4 thereunder in that it constitutes a stated policy, practice, or interpretation with respect to the meaning of an existing rule and is concerned solely with the administration of the self-regulatory organization.

At any time within 60 days of the final amendment to a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. For the purposes of this rule filing, the abrogation period commenced as of December 22, 1997, the date of filing of Amendment No. 2 hereto.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–97–90 and should be submitted by January 23, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–34193 Filed 12–31–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39484; File No. SR–NYSE–97–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., To Extend the Current $400,000 Limit on Transaction Charges Through 1998

December 23, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 22, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The current fee structure provides for a $400,000 cap on an individual member firm's monthly transaction charges. The structure also provides for an annual increase in the cap based on trading volume. The proposed revision for the 1998 transaction charge extends the cap at the current level of $400,000 rather than raising it as provided.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to respond to the needs of our constituents with respect to overall competitive market conditions and customer satisfaction.

2. Statutory Basis

The Exchange represents that proposed rule change is consistent with Section 6(b) of the Act,[2] in general, and furthers the objectives of Section 6(b)(4)[3] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[4] and subparagraph (3)(2) of Rule 19b–4 thereunder.[5]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the New York Stock Exchange. All submissions should refer to File No. SR–NYSE–97–35 and should be submitted by January 23, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–34194 Filed 12–31–97; 8:45 am]

BILLING CODE 8010–01–M

[2] 15 U.S.C. 78f(b).

[3] 15 U.S.C. 78f(b)(4).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(e)(2).

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice #2672]

Determination on International Development Association's Reconstruction Assistance Project (RAP) Credit to Bosnia

Pursuant to the authority vested in me by section 573(e) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 ("FOAA," Pub. L. 105–188), I hereby waive the application of section 573(b) of the FOAA with regard to the International Development Association's (IDA) Reconstruction Assistance Project Credit.

I hereby determine the IDA Reconstruction Assistance Project directly supports the implementation of the Dayton Agreement and its Annexes.

This Determination shall be published in the **Federal Register.**

Dated: December 15, 1997.

Strobe Talbott,

Acting Secretary of State.

[FR Doc. 97–34184 Filed 12–31–97; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF STATE

[Public Notice #2673]

Determination on USAID Bilateral Assistance to the Republika Srpska

Pursuant to the authority vested in me by section 573(e) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 ("FOAA," Pub. L. 105–118), I hereby waive the application of section 573(a) of the FOAA with regard to USAID-funded programs in the Republika Srpska.

I hereby determine that USAID's Municipal Infrastructure and Services Program, Bosnia Business Development Program, Economic Reform Program and Democratic Reform Program directly support the implementation of the Dayton Agreement and its Annexes.

This Determination shall be published in the **Federal Register.**

Dated: December 15, 1997.

Strobe Talbott,

Acting, Secretary of State.

[FR Doc. 97–34183 Filed 12–31–97; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF STATE

[Public Notice No. 2668]

Advisory Committee on International Communications and Information Policy; Meeting Notice

The Department of State is holding the next meeting of its Advisory Committee on International Communications and Information Policy. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

The guest speakers at the meeting will include Assistant Secretary of State for International Organization Affairs Princeton Lyman who will talk about the United Nation organizations, including the International Telecommunication Union. Also, Mr. Bruce Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks will speak on current

issues involving intellectual property rights.

In addition, the purpose of this meeting will be to hear reports from the working groups of various issues that chart the future direction and work plan of the committee. The members will look at the substantive issues on which the committee should focus, as well as specific countries and regions of interest to the committee.

This meeting will be held on Thursday, January 29, 1998, from 9:30 a.m.–12:30 p.m. in Room 1105 of the Main Building of the U.S. Department of State, located at 2201 "C" Street, N.W., Washington, DC 20520. Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Shirlett Brewer at (202) 647–8345 or by fax at (202) 647–0158. All attendees must use the "C" Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385.

Dated: December 15th, 1997.

Timothy C. Finton,

Executive Secretary.

[FR Doc. 97–34208 Filed 12–31–97; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF STATE

[Public Notice No. 2675]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Dangerous Goods, Solid Cargoes and Containers; Meeting Notice

The Working Group on Dangerous Goods, Solid Cargoes and Containers (DSC) of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on Wednesday, January 21, 1998, in Room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the Third Session of the DSC Subcommittee of the International Maritime Organization (IMO) which is scheduled for February 9–13, 1998, at the IMO Headquarters in London.

The agenda items of particular interest are:

a. Amendment 29 to the International Maritime Dangerous Goods (IMDG) Code, its Annexes and Supplements including harmonization of the IMDG Code with the United Nations Recommendations on the Transport of Dangerous Goods.

b. Implementation of Annex III of the Marine Pollution Convention (MARPOL 73/78), as amended.

c. Revision of the format of the IMDG Code.

d. Amendments to SOLAS chapters VI and VII to make the IMDG Code mandatory.

e. Amendments to SOLAS chapter VII to make the Irradiated Nuclear Fuel (INF) Code mandatory.

f. Implementation of IMO instruments and training requirements for cargo-related matters, including revision of resolution A.537(13) and development of multimodal training requirements.

g. Revision of the Emergency Schedules (EmS).

h. Revision of MSC/Circ.613 to include offshore tank containers.

i. Amendments to the Bulk Solids Code, including evaluation of properties of solid bulk cargoes.

j. Reports on incidents involving dangerous goods or marine pollutants in packaged form on board ships or in port areas.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. E. P. Pfersich, U.S. Coast Guard (G–MSO–3), 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–1577.

Dated: December 19, 1997.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97–34206 Filed 12–31–97; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 23.1419–2A, Certification of 14 CFR Part 23 Airplanes for Flight in Icing Conditions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Proposed Advisory Circular (AC) 23.1419–2A, and request for comments.

SUMMARY: This notice announces the availability of and request for comments on a proposed AC, which provides information and guidance concerning certification of part 23 airplanes for flight in icing conditions.

DATES: Comments must be received on or before March 3, 1998.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Standards Office (ACE–111), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration; telephone number (816) 426–6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.**

COMMENTS INVITED: We invite interested parties to submit comments on the proposed AC. Commenters must identify AC 23.1419–2A and submit comments to the address specified above. The FAA will consider all communications received on or before the closing date for comments before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE–110), Suite 900, 1201 Walnut, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

BACKGROUND: This Advisory Circular, AC 23.1419–2A, Certification of Part 23 Airplanes for Flight in Icing Conditions, sets forth an acceptable means, but not the only means of demonstrating compliance with the ice protection requirements in 14 CFR part 23. The FAA will consider other methods of demonstrating compliance that an applicant may elect to present. This material is neither mandatory nor regulatory in nature and does not constitute a regulation. This AC will cancel AC 23.1419–2, Certification of Part 23 Airplanes for Flight in Icing Conditions, dated January 3, 1992. This AC revises AC 23.1419–2 for icing certification for part 23 airplanes to address the following NTSB Recommendations: A–91–90, A–92–64, and A–92–86, the later amendments (23–41, 23–42, 23–43, 23–45, and 23–49) in part 23, and it provides information regarding tail plane icing.

The FAA Inflight Aircraft Icing Plan has tasks to improve the regulations and guidance related to certification of airplanes for operation in icing conditions defined by Appendix C and,

possibly, including envelopes supplementing those currently in Appendix C. These issues will be considered on the next revision of the AC. In addition, the FAA and the Joint Aviation Authorities (JAA) are harmonizing the performance and handling qualities of part 25. The Aviation Rulemaking Advisory Committee (ARAC) Flight Test Harmonization Working Group will complete the harmonization project to standardize performance, handling requirements, and additional guidance material for certification of part 25/Joint Aviation Requirements 25 (JAR 25) airplanes to safely operate in the icing conditions of Appendix C. These performance and handling qualities will be considered in the next revision to this AC, and to the second revision to AC 23–8A, Flight Test Guide for Certification of Part 23 Airplanes.

Issued in Kansas City, Missouri, December 16, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 97–34161 Filed 12–31–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–64]

Petitions for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 22, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3131.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on December 24, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29066.
Petitioner: Mr. James T. Hawkins.
Sections of the FAR Affected: 14 CFR 45.21(c)(2) and 45.29 (c), (d), and (e).
Description of Relief Sought: To permit the petitioner to display aircraft registration markings on his Piper Archer aircraft (Registration No. N3578M) that are ornamental in nature and do not meet the width, thickness, and spacing requirements of part 45.

Disposition of Petitions

Docket No.: 29038.
Petitioner: GE VARIG.
Sections of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To permit GE Varig to substitute the calibration standards of the Instituto Nacional de Metrologia, Normalização e Qualidade Industrial, Brazil's national standards organization, for the calibration standards of the U.S. National Institute of Standards and Technology, formerly the National Bureau of Standards, to test its inspection and test equipment.
Grant, December 18, 1997, Exemption No. 6709.

Docket No.: 28846.
Petitioner: Gulfstream International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.2(d)(1)(i)(D), 121.337(b)(8), and 121.359(g).
Description of Relief Sought/ Disposition: To permit Gulfstream to operate 25 Beechcraft 190C airplanes without those airplanes being equipped with approved smoke and fume protective breathing equipment for flight crewmembers from December 20, 1997, until March 20, 1998, a period of 90 days.
Grant, December 19, 1997, Exemption No. 6596D.

Docket No.: 29086.
Petitioner: Air Midwest, Inc.
Sections of the FAR Affected: 14 CFR 121.2 and 121.337(b)(8).
Description of Relief Sought/ Disposition: To permit Air Midwest to operate 15 Beechcraft 1900D airplanes in part 121 passenger-carrying operations after the December 20, 1997, compliance deadline without those airplanes being equipped with the required smoke and fume protective breathing equipment for the flight crewmembers, until January 1, 1998.
Grant, December 19, 1997, Exemption No. 6596F.

Docket No.: 29082.
Petitioner: Mesa Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.2 and 121.337(b)(8).
Description of Relief Sought/ Disposition: To permit Mesa to operate 41 Beechcraft 1900D airplanes in part 121 passenger-carrying operations after the December 20, 1997, compliance deadline without those airplanes being equipped with the required smoke and fume protective breathing equipment for the flight crewmembers, until January 31, 1998.
Grant, December 19, 1997, Exemption No. 6596E.

Docket No.: 28319.
Petitioner: Dornier Aviation (North America), Inc.
Sections of the FAR Affected: 14 CFR 121.411(a) (2), and (3), and (b)(2); 121.413 (b) and (c); appendix H to part 121; 135.337(a) (2) and (3), and (b)(2); and 135.339 (b) and (c).
Description of Relief Sought/ Disposition: To permit certain instructors employed by DANA and listed in a certificate holder's approved training program to act as instructors for a certificate holder under part 121 or part 135 without those instructors having received ground and flight training in accordance with a training program approved under subpart N of part 121 or subpart H of part 135, as applicable. That exemption also permits simulator instructors employed by DANA and listed in a certificate

holder's approved training program to serve in advance simulators without being employed by the certificate holder for 1 year, provided the instructors receive applicable training in accordance with the provisions of the exemption.

Grant, December 19, 1997, Exemption No. 6409A.

[FR Doc. 97–34165 Filed 12–31–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss Aircraft Certification Procedures Issues.

DATES: The meeting will be held on January 22, 1998 from 9:00 a.m. to 12:00 noon.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, 1400 K Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Angela O. Anderson, (202) 267–9681, Office of Rulemaking (ARM–200), 800 Independence Avenue, SW, Washington, DC 20591.

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 (ARAC) to discuss aircraft certification procedures issues. This meeting will be held January 22, 1998, at 9:00 a.m., at the General Aviation Manufacturers Association. The agenda for this meeting will include progress reports from the Production Certification and Parts Manufacturing Working Group, the Delegation Working Group and the ICPTF Working Group.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on December 22, 1997.

Brian Yanez,

Assistant Executive Director for Aircraft Certification Procedures Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–34162 Filed 12–31–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss general aviation operations issues.

DATES: The meeting will be held on January 22, 1998, at 1:00 p.m.

ADDRESSES: The meeting will be held at the Helicopter Association International, 1635 Prince Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Noreen Hannigan, Regulations Analyst, Office of Rulemaking (ARM–106), 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–7476; FAX: (202) 267–5075.

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 discuss general aviation operations issues.

This meeting will be held on January 22, 1998, at 1:00 p.m. at the Helicopter Association International, 1635 Prince Street, Alexandria, VA 22314.

The Agenda for this meeting will include:

(1) A status report on the Part 103 (Ultralight Vehicles) Working Group's Notice of Proposed Rulemaking (NPRM) on "Sport Pilot Certification Requirements;"

(2) An update on the status of the "Flight Plan Requirements for Helicopter Operations Under Instrument Flight Rules" NPRM;

(3) Discussion of overflights of national parks;

(4) Other general aviation topics (open discussion).

Attendance is open to the interested public but may be limited to the space available. 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. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on December 23, 1997.

Louis C. Cusimano,

Assistant Executive Director for General Aviation Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–34163 Filed 12–31–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 172 meeting to be held January 13–16, 1998, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will be as follows:

Tuesday, January 13: (1) Plenary Convenes at 9:00 a.m. for 30 minutes: (2) Introductory Remarks; (3) Review and Approval of the Agenda; (4) Working Group (WG)–2, VHF Data Radio Signal-in-Space MASPS, Continue Work on VDL Modes 2 and 3.

Wednesday, January 14: (a.m.) (5) WG–2 Continues; (p.m.) (6) WG–3, Review of Activities in VHF Digital Radio MOPS Document Program.

Thursday, January 15: (a.m.) (7) Plenary Reconvenes at 9:00 a.m. (p.m.) (8) WG's Continue as Necessary; (9) Review and Approval of the Minutes of the Previous Meeting; (10) Reports from WG's 2 and 3 Activities; (11) Report on VDL Activities and AMCP WG–D; (12) EUROCAE WG–47 Report and Discussion of Schedule for Further Joint Meetings with WG–3; (13) Review

Issues List and Address Future Work; (14) Other Business; (15) Dates and Places of Next Meetings.

Friday, January 16: WG's continue as Necessary.

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 December 24, 1997.

Terry R. Hannah,

Designated Official.

[FR Doc. 97–34160 Filed 12–31–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–97–3241]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and Request for Comments.

SUMMARY: In accordance with the requirement of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to extend its current approval of an information collection. This information collection is used by motor carriers, property brokers, and freight forwarders to register their operations with FHWA.

DATES: Comments must be submitted on or before March 3, 1998.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Vining, Office of Motor Carrier Information Analysis, (202) 358–7028, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Electronic Availability* An electronic copy of this document may be downloaded using a modem and suitable communications software from the Federal Register electronic bulletin board service (telephone number: 202–512–1661). Internet users may reach the Federal Register's WWW site at:

http://www.access.gpo.gov/su_docs

Title: Revision of Licensing Application Forms, Application Procedures, and Corresponding Regulations.

OMB Number: 2125–0568.

Background: The Secretary of Transportation is authorized to register for-hire motor carriers of regulated commodities under the provisions of 49 U.S.C. 13902, surface freight forwarders under the provisions of 49 U.S.C. 13903, and property brokers under the provisions of 49 U.S.C. 13904. These persons may conduct transportation services only if they are registered. 49 U.S.C. 13901. Authority pertaining to these registrations has been delegated to the FHWA, and related regulations are found at 49 CFR 365.

Forms OP–1 (for motor property carriers and brokers), OP–1(P) (for motor passenger carriers), and OP–1 (FF) (for freight forwarders) are used to apply for registration with the FHWA. The forms all ask for limited information on the applicant's identity, location, familiarity with safety requirements, and type of proposed operations. Minor differences in each form reflect specific statutory standards for registration of the different types of transportation entities.

Respondents: Motor carriers, freight forwarders, and brokers.

Average Burden Per Response: The estimated average burden per response is 2 hours.

Estimated Total Annual Burden: The estimated total annual burden is 36,000 hours.

Frequency: This is a one-time reporting requirement. Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) the necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for extension of OMB approval of this information collection.

Authority: 23 U.S.C. 315 and 49 CFR 1.48.

Issued on: December 19, 1997.

George S. Moore,

Associate Administrator for Administration.

[FR Doc. 97–34080 Filed 12–31–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of 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 Community Development Financial Institutions Fund (the Fund) within the Department of the Treasury is soliciting comments concerning the Community Development Financial Institutions (CDFI) Program.

DATES: Written comments should be received on or before March 3, 1998 to be assured of consideration.

ADDRESSES: Direct all comments to the Director, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, D.C. 20005, Fax Number (202) 622–7754.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, D.C. 20005, or call (202) 622–8662.

SUPPLEMENTARY INFORMATION:

Title: Community Development Financial Institutions Program.

OMB Number: 1505–0154.

Abstract: The purpose of the Community Development Banking and Financial Institutions Act of 1994 (Act) was to create the Fund to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions (CDFIs). The investments by the CDFI Program are intended to facilitate the creation of a national network of financial institutions that is dedicated to community development.

Current Actions: The Fund is in the process of making revisions to its regulations (12 CFR part 1805), application and assistance agreements, in order to publish a Notice of Funds Availability (NOFA) for the third round of the CDFI Program.

Type of review: Extension with change.

Affected Public: Community development financial institutions.

Estimated Number of Respondents (Application): 250.

Estimated Number of Recordkeepers: 125.

Estimated Annual Frequency of Responses (Application): 1.

Estimated Annual Frequency of Reporting and Recordkeeping: 5.

Estimated Annual Time Per Respondent (Application): 100 hours.

Estimated Annual Time Per Recordkeeper: 36 hours.

Estimated Total Annual Burden Hours: 29,500 hours.

Requests 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 technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 4703, 4717; chapter X, Pub. L. 104–19, 109 Stat. 237 (12 U.S.C. 4703 note), 12 CFR part 1805.

Dated: December 29, 1997.

Maurice A. Jones,

Acting Deputy Director, Community Development Financial Institutions Fund.

[FR Doc. 97–34219 Filed 12–31–97; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of 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 Community Development Financial Institutions Fund (the Fund) within the Department of the Treasury is soliciting comments concerning the Presidential Awards for Excellence in Microenterprise Development (Microenterprise) Program.

DATES: Written comments should be received on or before February 2, 1998 to be assured of consideration.

ADDRESSES: Direct all comments to the Director, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, DC 20005, Fax Number (202) 622–7754.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, D.C. 20005, or call (202) 622–8662.

SUPPLEMENTARY INFORMATION:

Title: Presidential Awards for Excellence in Microenterprise Development Program.

OMB Number: 1505–0158.

Abstract: The Microenterprise Program was created as one of the commitments made by the United States at the United Nations Fourth World Conference on Women held in Beijing, China in September 1995. As a key development finance initiative of the Clinton Administration, the Community Development Financial Institutions Fund was selected to administer the program. By recognizing outstanding microenterprise development and support organizations, the Microenterprise Program's mission is to advance an understanding of "best practices" in the field of microenterprise development and bring wider public attention to the important successes of microenterprise development in the United States. The awards are non-monetary awards that are made annually.

Current Actions: The Fund is in the process of making revisions to its application, in order to begin the second round of the Microenterprise Program.

Type of review: Reinstatement with change.

Affected Public: Microenterprise organizations and organizations that provide support to microenterprise organizations.

Estimated Number of Respondents: 80.

Estimated Annual Time Per Respondent: 35 hours.

Estimated Total Annual Burden Hours: 2,800 hours.

Requests 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 technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: Pub. L. 103–325, 108 Stat 2166, 2189 (12 U.S.C. 4703, 4718); chapter X, Pub. L. 104–19, 109 Stat. 237 (12 U.S.C. 4703 note).

Dated: December 24, 1997.

Maurice A. Jones,

Acting Deputy Director, Community Development Financial Institutions Fund.

[FR Doc. 97–34167 Filed 12–31–97; 8:45 am]

BILLING CODE 4810–70–P

federal register

Friday
January 2, 1998

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 129
Repair Assessment for Pressurized Fuselages; Proposed Rule

Proposed Advisory Circular (AC) 120–XX, Repair Assessment of Pressurized Fuselages; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 129

[Docket No. 29104; Notice No. 97–16]

RIN 2120–AF81

Repair Assessment for Pressurized Fuselages

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rulemaking would require incorporation of repair assessment guidelines for the fuselage pressure boundary (fuselage skins and pressure webs) of certain transport category airplane models into the FAA-approved maintenance or inspection program of each operator of those airplanes. This action is the result of concern for the continued operational safety of airplanes that are approaching or have exceeded their design service goal. The purpose of the repair assessment guidelines is to establish a damage-tolerance based supplemental inspection program for repairs to detect damage, which may develop in a repaired area, before that damage degrades the load carrying capability of the structure below the levels required by the applicable airworthiness standards.

DATES: Comments must be submitted on or before April 2, 1998.

ADDRESSES: Comments on this document may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 29104, 800 Independence Avenue SW., Washington, DC 20591; or delivered in triplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 29104. Comments may also be submitted electronically to: 9–NPRM–CMTS@faa.dot.gov. Comments may be examined in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Transport Airplane Directorate (ANM–100), Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, WA 98055–4056. Comments in the information docket may be examined weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Dorenda Baker, Manager, Aging Aircraft Program, ANM–109, FAA Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2109, facsimile (425) 227–1100.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adoption of the proposals in this notice are also invited. Substantive comments should also be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 29104. The postcard will be date stamped and returned to the commenter.

Availability of the NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the online **Federal Register** database through GPO Access (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov or GPO's **Federal Register** web page at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 267–9677. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should request from the Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Ave SW., Washington, D.C. 20591, or by calling (202) 267–3484, a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

This proposal, to require the incorporation of repair assessment guidelines into the maintenance or inspection program for certain transport category airplanes, follows from commitments made by the FAA and the aviation community in June 1988 to address the issues concerning the safety of aging transport airplanes.

In April 1988, a high-cycle transport airplane enroute from Hilo to Honolulu, Hawaii, suffered major structural damage to its pressurized fuselage during flight. This accident was attributed in part to the age of the airplane involved. The economic benefit of operating certain older technology airplanes has resulted in the operation of many such airplanes beyond their previously projected retirement age. Because of the problems revealed by the accident in Hawaii and the continued operation of older airplanes, both the FAA and industry generally agreed that increased attention needed to be focused on the aging fleet and on maintaining its continued operational safety.

In June 1988, the FAA sponsored a conference on aging airplanes. As a result of that conference, an aging aircraft task force was established in August 1988 as a sub-group of the FAA's Research, Engineering, and Development Advisory Committee, representing the interests of the aircraft operators, aircraft manufacturers, regulatory authorities, and other aviation representatives. The task force, then known as the Airworthiness Assurance Task Force (AATF), set forth five major elements of a program for keeping the aging fleet safe. For each airplane model in the aging transport fleet, (1) select service bulletins describing modifications and inspections necessary to maintain structural integrity; (2) develop

inspection and prevention programs to address corrosion; (3) develop generic structural maintenance program guidelines for aging airplanes; (4) review and update the Supplemental Structural Inspection Documents (SSID) which describe inspection programs to detect fatigue cracking; and (5) assess damage-tolerance of structural repairs. Structures Task Groups sponsored by the Task Force were assigned the task of developing these elements into usable programs.

Today the Task Force, which has been reestablished as the Airworthiness Assurance Working Group (AAWG) of the Aviation Rulemaking Advisory Committee (ARAC), has completed its work on the first four elements. This proposed rulemaking addresses the fifth element, the assessment of repair damage tolerance.

Related Regulatory Activity

In addition to the initiatives previously discussed, there are other activities associated with FAA's Aging Aircraft Program. These include FAA's response to the Aging Aircraft Safety Act and future rulemaking to mandate corrosion prevention and control programs for all airplanes used in air transportation.

The Aging Aircraft Safety Act of 1991 (Pub. L. 49 U.S.C. 44717) instructed the Administrator to prescribe regulations that ensure the continuing airworthiness of aging aircraft through inspections and reviews of the maintenance records of each aircraft an air carrier uses in air transportation. In response to the Act, the FAA published notice 93–14 on October 5, 1993 (58 FR 51944). The FAA has reviewed the public comments to that Notice and anticipates regulatory action in the near future based on those comments and other considerations.

In addition, the FAA has found that some operators do not have a programmatic approach to corrosion prevention and control programs (CPCP). In its accident investigation report (NTSB/AAR–89/03) on the Aloha accident, the NTSB recommended that the FAA mandate a comprehensive and systematic CPCP. Therefore, the FAA is considering rulemaking to mandate CPCPS for all airplanes used in air transportation. As part of that deliberation, the FAA is considering the corrosion prevention and control programs recommended by the AATF and adopted by the FAA through Airworthiness Directives (ADs); those ADs affect all of the airplanes affected by this proposal.

The Aviation Rulemaking Advisory Committee

The ARAC was formally established by the FAA on January 22, 1991 (56 FR 2190), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. This advice was sought to develop better rules in less overall time using fewer FAA resources than are currently needed. The committee provides the opportunity for the FAA to obtain firsthand information and insight from interested parties regarding proposed new rules or revisions of existing rules.

There are over 60 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop proposals to recommend to the FAA for resolving specific issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, all interested parties are invited to participate as working group members. Working groups report directly to the ARAC, and the ARAC must concur with a working group proposal before that proposal can be presented to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures. After an ARAC recommendation is received and found acceptable by the FAA, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package will be fully disclosed in the public docket.

By **Federal Register** notice dated November 30, 1992 (57 FR 56627), the AATF was placed under the auspices of the Aviation Rulemaking Advisory Committee (ARAC) and renamed as the Airworthiness Assurance Working Group. One of the specific tasks assigned to the AAWG was to develop recommendations concerning whether new or revised requirements and compliance methods for structural repair assessments of existing repairs should be initiated and mandated for the Airbus A300; BAC 1–11; Boeing 707/720, 727, 737, 747; Douglas DC–8, DC–9/MD–80, DC–10; Fokker F–28; and Lockheed I –1011 airplanes.

The Concern Posed By Older Repairs

The basic structure of each of the large jet transports that would be affected by this proposed rule was required at the time of original certification to meet the applicable regulatory standards for fatigue or fail-safe strength. Repairs and modifications to this structure were also required to meet these same standards.

These early fatigue or fail-safe requirements did not provide for timely inspection of critical structure so that damaged or failed components could be dependably identified and repaired or replaced before a hazardous condition developed. In 1978 a new certification requirement called damage tolerance was introduced to assure the continued structural integrity of transport category airplanes certificated after that time. This concept was adopted as an amendment to § 25.571 by Amendment 25–45 (43 FR 46242), and for existing designs, guidance material based on this rule was published in 1981 as Advisory Circular (AC) 91–56, Supplemental Structural Inspection Program for Large Transport Category Airplanes.

Damage tolerance is a structural design and inspection methodology used to maintain safety considering the possibility of metal fatigue or other structural damage (i.e., safety is maintained by adequate structural inspection until the damage is repaired). The underlying principle for damage tolerance is that the initiation and growth of structural fatigue damage can be anticipated with sufficient precision to allow inspection programs to safely detect damage before it reaches a critical size. A damage-tolerance evaluation entails the prediction of sites where fatigue cracks are most likely to initiate in the airplane structure, the prediction of the crack trajectories and rates of growth under repeated airplane structural loading, the prediction of the size of the damage at which strength limits are exceeded, and an analysis of the potential opportunities for inspection of the damage as it progresses. This information is used to establish an inspection program for the structure that, if rigorously followed, will be able to detect cracking that may develop before it precipitates a major structural failure. A damage-tolerant structure is one in which damage would be detected by reliance on normally performed maintenance and inspection actions long before it becomes hazardous.

The evidence to date is that when all critical structure is included, the damage-tolerant concept, and the supplemental inspection programs that

are based on it, provide the best assurance of continued structural integrity that is currently available. In order to apply this concept to existing transport airplanes, beginning in 1984, the FAA issued a series of Airworthiness Directives (AD's) requiring compliance with the first supplemental inspection programs resulting from application of this concept to existing airplanes. Nearly all of the airplane models affected by this proposed rule are now covered by such AD's. Generally, these AD's require that operators incorporate Supplemental Structural Inspection Documents (SSID's) into their maintenance programs for the affected airplanes. These documents were derived from damage-tolerance assessments of the originally certificated type designs for these airplanes. For this reason, the majority of AD's written for the SID program did not attempt to address issues relating to the damage tolerance of repairs that had been made to the airplanes. The objective of this proposed rule is to provide that same level of assurance for areas of the structure that have been repaired.

Repairs are a concern on older airplanes because of the possibility that they may develop, cause, or obscure metal fatigue, corrosion, or other damage during service. This damage might occur within the repair itself or in the adjacent structure and might ultimately lead to structural failure. The damage-tolerance evaluation of a repair would be used in an assessment program to establish an appropriate inspection program, or a replacement schedule if the necessary inspection program is too demanding or not possible. The objective of the repair assessment is to assure the continued structural integrity of the repaired and adjacent structure based on damage-tolerance principles.

In general, repairs present a more challenging problem to solve than the original structure because they are unique and tailored in design to correct particular damage to the original structure. Whereas the performance of the original structure may be predicted from tests and from experience on other airplanes in service, the behavior of a repair and its effect on the fatigue characteristics of the original structure are generally not known to the same extent as for the basic unrepaired structure.

The available service record and surveys of out-of-service and in-service airplanes have indicted that existing repairs perform well. Although the cause of an airplane accident has never been attributed to properly applied repairs using the original repair data, repairs may be of concern as time-in-service increases for the following reasons:

1. As airplanes age, both the number and age of the existing repairs increase. Along with this increase in the number of and age of repairs is the possibility of unforeseen repair interaction, autogenous failure, or other damage occurring in the repaired area. The continued operational safety of these airplanes depends primarily on a satisfactory maintenance program (inspections conducted at the right time, in the right place, using the most appropriate technique). To develop this program, a damage tolerance evaluation of repairs to flight-critical structure is essential. The longer an airplane is in service, the more important this evaluation and a subsequent inspection program become.

2. The practice of damage-tolerance methodology has evolved gradually over the last 20 plus years. Some repairs described in the airplane manufacturers' Structural Repair Manuals (SRMs) were not designed to current standards. Repairs accomplished in accordance with the information contained in the early versions of the SRMs may require additional inspections if evaluated using the current methodology.

3. Because a regulatory requirement for damage tolerance was not applied to airplane designs type certificated before 1978, the damage-tolerance characteristics of repairs may vary widely and are largely unknown.

Development of Recommendation

To address the ARAC assignment on repairs, the AAWG tasked the manufacturers to develop repair assessment guidelines requiring specific maintenance programs to maintain the damage-tolerance integrity of the basic airframe. The following criteria were developed to assist the manufacturers in the development of that guidance material:

- Specific repair size limits for which no assessment is necessary should be selected for each model of airplane.
- Repairs that do not conform to SRM standards must be reviewed and may require further action.
- Repairs must be reviewed where the repair has been installed in accordance with SRM data that have been superseded or rendered inactive by new damage-tolerant designs.
- Repairs in close proximity to other repairs or modifications require review to determine their impact on the continued airworthiness of the airplane.
- Repairs that exhibit structural distress should be replaced before further flight.

To identify the scope of the overall program, fleet data were required. This resulted in the development of a five-step program to develop factual data for the development of the rule. The five-step AAWG program consisted of:

- Development of model specific repair assessment guidelines using AAWG repair criteria.
- Completion of a survey of a number of operators' airplanes to assess fuselage skin repairs, and to validate the approach of the manufacturer's repair assessment guidelines.
- Determination of the need for and the development of a world-wide survey.
- Collection and assessment of results to determine further necessary actions.
- Development of specific manufacturer/operator/FAA actions.

Early in the development of this task, each manufacturer began to prepare model specific repair assessment guidelines. When sufficiently developed, these draft guidelines were shared with the operators to get feedback on acceptability and suggestions for improvement. The operators stressed the need for commonality in approach and ease of use of the guidelines. They also expressed the need for guidelines that could be used on the shop floor without engineering assistance and without extensive training.

Meanwhile, the AAWG conducted two separate surveys of existing repairs on airplanes to collect necessary data. The first survey was conducted in March 1992 on certain large transport category airplanes being held in storage. Teams, comprised of engineering representatives from various organizations, including FAA's Aircraft Certification and Flight Standards offices, operators, and manufacturers, surveyed 356 external fuselage skin repairs on 30 airplanes of 6 types. Using repair classification criteria developed by the individual airplane manufacturers, the teams concluded that the general quality of the repairs appeared good. Forty percent of the repairs were adequate, requiring no supplemental inspections, and sixty percent needed a more comprehensive damage-tolerance based assessment, with the possibility that supplemental inspections might be needed. Some determining factors on the need for further assessment were the size of the repair and its proximity to other repairs. While the survey sample size was very small compared to the total population of transport airplanes type certificated

prior to 1978, it provided objective information on the quality and damage-tolerance characteristics of existing airplane repairs.

In 1994, the AAWG requested that the manufacturers conduct a second survey on airplane repairs to validate the 1992 results and to provide additional information relative to the estimated cost of the assessment program. The manufacturers were requested to visit airlines operating their products and to conduct surveys on airplanes in heavy maintenance. An additional 35 airplanes were surveyed in which 695 repairs were evaluated. This survey was expanded to include all areas of the airframe. The evaluation revealed substantially similar results to the 1992 results in which forty percent of the repairs were classified as adequate, and sixty percent of the repairs required consideration for additional supplemental inspection during service. In addition, only a small number of repairs (less than 10 percent) were found on portions of the airframe other than the external fuselage skin.

The AAWG proposed that the repair assessment be initially limited to the fuselage pressure boundary (fuselage skins and bulkhead webs); if necessary, future rulemaking would address the remaining primary structure. This limitation is based on two considerations.

First, the fuselage is more sensitive to structural fatigue than other airplane structure because its normal operating loads are closer to its limit design loads. Stresses in a fuselage are primarily governed by the pressure relief valve settings of the environmental control system, and these are less variable from flight to flight than the gust or maneuver loads that typically determine the design stresses in other structure. Second, the fuselage is more prone to damage from ground service equipment than other structure and requires repair more often. The result of the second survey described above supports the conclusion that repairs to the fuselage are far more frequent than to any other structure.

This proposed rule would only apply to eleven large transport category airplane models. (In the original ARAC task, the 707 and 720 were counted as one model. This proposed rule addresses the 707 and 720 models separately due to their different flight cycle implementation times.) The reason for this limitation is that the original tasking to the ARAC limited the scope of the work to the eleven oldest models of large transport category airplanes then in regular service. This tasking identified those airplanes for which the greatest concern exists as to the status of primary structure repairs. Derivatives of the original airplanes models are covered to the extent that the structure has not been upgraded to meet damage tolerance requirements.

Those transport category airplanes that have been certificated to regulatory standards that include the requirements for damage tolerant structure under § 25.571 of 14 CFR part 25, as amended by Amendment 25–45, are not included. These later requirements make it incumbent on the operating certificate holder to return the structure to the original certification basis by installing only those repairs that meet the airplane's damage-tolerant certification basis. The AAWG, in its final report on this subject, did recommend continued monitoring of repairs on the newer airplanes, with the possibility of additional rulemaking if conditions warrant. (A copy of the AAWG's final report is included in the public docket for this rulemaking.)

As a result of the AAWG activities, the manufacturers have recognized the need for, and made a commitment to develop, for each affected airplane model, a repair assessment guidelines document and a Structural Repair Manual, updated to include the results of a damage-tolerance assessment. When referring to these documents and related actions in this proposed rule, the FAA is referring to actions the manufacturers have agreed to take.

It was also recognized by the AAWG that repair assessment guidelines would add to, or in some cases appear to be in conflict with, existing repair approval data. All repairs assessed under this proposed rule should have been previously approved by the FAA using an FAA-approved SRM, an FAA-approved Service Bulletin, or a repair scheme approved by an FAA Designated Engineering Representative or an SFAR 36 authorization holder. To avoid the appearance of conflicts between FAA approved data sources, the manufacturers have agreed to update the affected SRMs, as well as repairs identified in Service Bulletins, to determine requirements for supplemental inspections, if not already addressed.

Structural modifications and repairs mandated by Airworthiness Directives do not always contain instructions for future supplemental inspection requirements. The manufacturers have agreed to evaluate the need for post modification inspections for these mandated modifications and repairs. A list of Service Bulletins that are the subject of Airworthiness Directives will be contained in the model specific repair assessment guidelines, with required post modification/repair inspection programs as required. A list of other structural Service Bulletins will be provided in the model specific repair assessment guidelines with associated inspection thresholds and repeat intervals. The manufacturers have agreed to complete their review of Service Bulletin related skin repairs in conjunction with the initial SRM updates.

These agreements notwithstanding, there is still a possibility that the requirements in the repair assessment guidelines will not agree with that in an AD, especially if the AD was written to address a modification to the airplane made by someone other than the original manufacturer. Federal Aviation Regulations would require that compliance be shown with both the AD and this proposed rule. Such dual compliance can be avoided in the longer term by working with the manufacturer, if that is the source of difficulty, or by securing an Alternative Method of Compliance (AMOC) to the AD. In the short term, compliance with the earlier threshold, shorter repeat inspection interval or more stringent rework/replace schedule would always constitute compliance with the less stringent requirement. Thus, the operator would not be faced with an unresolvable conflict.

The AATF originally recommended that the use of repair assessment guidelines be mandated by Airworthiness Directive. The FAA concluded that an unsafe condition necessitating AD action had not been established for repairs, and this position is supported by both repair surveys. However, the FAA also considered, and the AAWG agreed, that the long term concern with repairs on older airplanes, as described earlier, does warrant regulatory action, and this proposed rule addresses that concern.

The AAWG also recognized that the concerns discussed above for the safety of existing repairs would also apply to the long-term safety of future repairs to these airplanes. Therefore, the AAWG considered that new repairs should also be subject to damage-tolerance assessments. It is expected that most new repairs will be installed in accordance with an FAA-approved SRM that has been updated to include this damage-tolerance assessment. However, in the event that a new repair is installed for which no such assessment has been made, or is available, the repair assessment guidelines prepared to meet the requirements of this proposal should be used. The intent of this proposed rule is that all repairs to

the fuselage pressure boundary will be evaluated for damage-tolerance, and that any resulting inspection schedule will be specified and the work accomplished, regardless of when, or by whom the repair was installed.

Repair Assessment Guidelines

The next step in the AAWG's program for this task was to develop a repair assessment methodology that is effective in evaluating the continued airworthiness of existing repairs for the fuselage pressure boundary on affected transport category airplane models. Older airplane models may have many structural repairs, so the efficiency of the assessment procedure is an important consideration. In the past, evaluation of repairs for damage-tolerance would require direct assistance from the manufacturer. Considering that each repair design is different, that each airplane model is different, that each area of the airplane is subjected to a different loading environment, and that the number of engineers qualified to perform a damage-tolerance assessment is small, the size of an assessment task conducted in that way would be unmanageable. Therefore, a new approach was developed.

Since repair assessment results will depend on the model specific structure and loading environment, the manufacturers were tasked to create an assessment methodology for the types of repairs expected to be found on each affected airplane model. Since the records on most of these repairs are not readily available, locating the repairs will necessitate surveying the structure of each airplane. A survey form was created that may be used to record key repair design features needed to accomplish a repair assessment. Airline personnel not trained as damage-tolerance specialists can use the form to document the configuration of each observed repair.

Using the information from the survey form as input data, the manufacturers have developed simplified methods to determine the damage tolerance characteristics of the surveyed repairs. Although the repair assessments should be performed by well trained personnel familiar with the model specific repair assessment guidelines, these methods enable an engineer or technician, not trained as a damage-tolerance specialist, to perform the repair assessment without the assistance of the manufacturer.

From the information on the survey form, it is also possible to classify repairs into one of three categories:

Category A: A permanent repair for which the baseline zonal inspection (BZI), (typical maintenance inspection intervals assumed to be performed by most operators), is adequate to ensure continued airworthiness (inspectability) equal to the unrepaired surrounding structure.

Category B: A permanent repair that requires supplemental inspections to ensure continued airworthiness.

Category C: A temporary repair that will need to be rewarded or replaced prior to an established time limit. Supplemental inspections may be necessary to ensure continued airworthiness prior to this limit.

This methodology is being generated by the airplane manufacturers. Model specific repair assessment guidelines will be prepared by the manufacturers for the eleven aging airplane models. Uniformity and similarity of these repair assessment procedures between models is important to simplify operator workload. The manufacturers have spent considerable time over the last four years to achieve commonality of the repair assessment process. The inspection intervals contained in the FAA-approved model specific guidelines documents are based on residual strength, crack growth, and inspectability evaluations. The manufacturers are endeavoring to make the inspection methods and intervals compatible with typical operator maintenance practice. Thus, internal inspections would be acceptable at "D-check" intervals, or equivalent cycle limit, while simpler external inspections could be accommodated at multiple "C-check" intervals, or equivalent cycle limit. If the inspection method and intervals for a given repair are not compatible with the operator's maintenance schedule, the repair could be replaced with a more damage-tolerant repair.

The model specific repair assessment guidelines documents are scheduled to be published no later than July 1, 1997, and will require approval by the FAA Aircraft Certification Office (ACO) having cognizance over the type certificate. Once approved, this material can also be used for evaluating the damage-tolerance characteristics of new repairs for continued airworthiness.

In order to further facilitate the assessment process, the manufacturers have agreed to update model specific SRMs to reflect damage tolerance repair considerations. The goal is to complete these updates by the first revision cycle of the model specific SRM, after the release of the associated repair assessment guidelines document. Consistent with the result of the surveys, only fuselage pressure boundary repairs are under consideration in this proposal.

The general section of each SRM, Chapter 51, will contain brief descriptions of damage tolerance considerations, categories of repairs, description of baseline zonal inspections, and the repair assessment logic diagram. Chapter 53 of the SRM for pressurized fuselage skin will be updated to identify repair categories and related information.

In updating each SRM, existing location-specific repairs should be labeled with appropriate repair category identification (A, B, or C), and specific inspection requirements for B and C repairs should also be provided as applicable.

Structural Repair Manual descriptions of generic repairs will also contain repair category considerations regarding size, zone, and proximity. Detailed information for determination of inspection requirements will be provided in separate repair assessment guidelines documents for each model. Repairs which were installed in accordance with a once current SRM, but which have now been superseded by a new damage-tolerant design, will require review. Such superseded repairs may be reclassified to Category B or C, requiring additional inspections and/or rework.

Repair Assessment Process

There are two principle techniques that can be used to accomplish the repair assessment. The first technique involves a three stage procedure. This technique could be well suited for operators of small fleets. The second technique involves the incorporation of the repair assessment guidelines as part of an operator's routine maintenance program. This approach could be well suited for operators of large fleets and would evaluate repairs at predetermined planned maintenance visits as part of the maintenance program. Manufacturers and operators may develop other techniques, which would be acceptable as long as they fulfill the objectives of this proposed rule, and are FAA approved.

The first technique generally involves the execution of the following three stages:

Stage 1—Data Collection

This stage specifies what structure should be assessed for repairs and collects data for further analysis. If a repair is on a structure in an area of concern, the analysis continues, otherwise the repair does not require classification per this program.

Repair assessment guidelines for each model will provide a list of structure for which repair assessments are required.

Some manufacturers have reduced this list by determining the inspection requirements for critical details. If the requirements are equal to normal maintenance checks (e.g., BZI checks), those details were excluded from this list.

Repair details are collected for further analysis in Stage 2. Repairs that do not meet the static strength requirements or are in a bad condition are immediately identified, and corrective actions must be taken before further flight.

Stage 2—Repair Categorization

The repair categorization is accomplished by using the data gathered in Stage 1 to answer simple questions regarding structural characteristics.

If the maintenance program is at least as rigorous as the BZI identified in the manufacturer's model specific repair assessment guidelines, well designed repairs in good condition meeting size and proximity requirements are Category A. Simple condition and design criteria questions are provided in Stage 2 to define the lower bounds of Category B and Category C repairs. The process continues for Category B and C repairs.

Stage 3—Determination of Structural Maintenance Requirements

The supplemental inspection and/or replacement requirements for Category B and C repairs are determined in this stage. Inspection requirements for the repair are determined by calculation or by using predetermined values provided by the manufacturer, or other values obtained using an FAA-approved method.

In evaluating the first supplemental inspection, Stage 3 will define the inspection threshold in flight cycles measured from the time of repair installation. If the time of installation of the repair is unknown and the airplane has exceeded the assessment implementation times or has exceeded the time for first inspection, the first inspection should occur by the next "C-check" interval, or equivalent cycle limit after the repair data is gathered (Stage 1).

An operator may choose to accomplish all three stages at once, or just Stage 1. In the latter case, the operator would be required to adhere to the schedule specified in the FAA-approved model specific repair assessment guidelines for completion of Stages 2 and 3.

Incorporating the maintenance requirements for Category B and C repairs into an operator's individual airplane maintenance or inspection program completes the repair assessment process for the first technique.

The second technique would involve setting up a repair maintenance program to evaluate all fuselage pressure boundary repairs at each predetermined maintenance visit to confirm that they are permanent. This technique would require the operator to choose an inspection method and interval in accordance with the FAA-approved repair assessment guidelines. The repairs whose inspection requirements are fulfilled by the chosen inspection method and interval would be inspected in accordance with the regular FAA-approved maintenance program. Any repair that is not permanent, or whose inspection requirements are not fulfilled by the chosen inspection method and interval, would either be: (1) Upgraded to allow utilization of the chosen inspection method and interval, or (2) individually tracked to account for the repair's unique inspection method and interval requirements. This process is then repeated at the chosen inspection interval.

Repairs added between the predetermined maintenance visits, including interim repairs installed at remote locations, would be required either to have a threshold greater than the length of the predetermined maintenance visit or to be tracked individually to account for the repair's unique inspection method and interval requirements. This would ensure the airworthiness of the structure until the next predetermined maintenance visit, at which time the repair would be evaluated as part of the repair maintenance program.

Whichever technique is used, there may be some repairs that cannot easily be upgraded to Category A for cost, downtime, or technical reasons. Such repairs will require supplemental inspections, and each operator should make provisions for this when incorporating the repair assessment guidelines into its maintenance program.

Repair Assessment Implementation Time

The implementation time for the assessment of existing repairs is based on the findings of the repair surveys and fatigue damage considerations. The repair survey findings indicated that all repairs reviewed appeared to be in good structural condition. This tended to validate the manufacturer's assumptions in designing both the repair and the basic structure. Since the manufacturer had based the design stress levels on a chosen Design Service Goal (DSG), it was concluded that the repair assessment needed to be implemented sometime before a specific model reached its DSG. Based on this logic, the manufacturers and operators established an upper bound for an assessment to be completed and then reduced it to establish an "implementation time," defined as 75 percent of DSG in terms of flight cycles.

Therefore, under this approach, incorporation of the repairs assessment guidelines into an airplane's maintenance or inspection program ideally should be accomplished before an airplane accumulates 75 percent of DSG. After the guidelines are incorporated into the maintenance or inspection program, operators should begin the assessment process for existing fuselage repairs within the flight cycle limit specified in the FAA-approved model specific repair assessment guidelines. There are three deadlines for beginning the repair assessment process, depending on the cycle age of the airplane on the effective date of the rule.

1. Airplane Cycle Age Equal to or less than Implementation Time on the Rule Effective Date

The operator would be required to incorporate the guidelines in its maintenance or inspection program by the flight cycle implementation time, or one year after the effective date of the rule, whichever occurs later. The assessment process would begin (e.g., accomplishment of Stage 1) on or before the cycle limit specified in the repair assessment guidelines (generally equivalent to a "D" check) after incorporation of the guidelines.

2. Airplane Cycle Age greater than the Implementation Time but less than the DSG on the Rule Effective Date

The operator would be required to incorporate the guidelines in its maintenance or inspection program within one year of the rule effective date. The assessment process would begin (e.g., accomplishment of Stage 1) on or before the cycle limit in the repair assessment guidelines (generally equivalent to a "D" check), not to exceed the cycle limit computed by adding the DSG to the cycle limit equivalent of a "C" check (also specified in the repair assessment guidelines) after incorporation of the guidelines.

3. Airplane Cycle Age greater than the DSG on the Rule Effective Date

The operator would be required to incorporate the guidelines in its maintenance or inspection program within one year of the rule effective

date. The assessment process would begin (e.g., accomplishment of Stage 1) on or before the cycle limit specified in the repair assessment guidelines (equivalent to a "C" check) after incorporation of the guidelines.

In each of these three cases, the assessment process would have to be completed, the inspections conducted, and any necessary corrective action taken, all in accordance with the schedule specified in the FAA-approved repair assessment guidelines.

Discussion of the Proposed Rule

This proposed rule is intended to ensure that a comprehensive repairs assessment for damage-tolerance be completed for fuselage pressure boundary repairs, and that the resulting inspections, modifications and corrective actions (if any) be accomplished in accordance with the model specific repair assessment guidelines. To comply with this, the operator would need to consider the following:

1. The means by which the FAA-approved repair assessment guidelines are incorporated into a certificate holder's FAA-approved maintenance or inspection program, as would be required by the proposed rule, is subject to approval by the certificate holder's principal maintenance inspector (PMI) or other cognizant airworthiness inspector.

2. The repair assessment guidelines must be approved by the FAA Aircraft Certification Office (ACO) having cognizance over the type certificate of the airplane.

3. This rule would not impose any new reporting requirements; however, normal reporting required under 14 CFR 121.703 would still apply.

4. This rule would not impose any new FAA recordkeeping requirements. However, as with all maintenance, the current operating regulations (e.g., 14 CFR 121.380) already impose recordkeeping requirements that would apply to the actions required by this proposed rule. When incorporating the repair assessment guidelines into its approved maintenance program, each operator should address the means by which it will comply with these recordkeeping requirements. That means of compliance, along with the remainder of the program, would be subject to approval by the cognizant PMI or other cognizant airworthiness inspector.

5. The scope of the assessment is limited to repairs on the fuselage pressure boundary (fuselage skins and pressure webs).

a. A list of Service Bulletins that are the subject of AD's will be contained in the model specific repair assessment guidelines with required post modification/repair inspection programs, as required.

b. A list of other structural Service Bulletins will be provided in the model specific repair assessment guidelines with associated inspection threshold and repeat intervals.

6. The repair assessment guidelines provided by the manufacturer do not generally apply to structure modified by a Supplemental Type Certificate (STC). The operator, however, would still be responsible, under this proposed rule, to provide repair assessment guidelines applicable to the entire fuselage external pressure boundary that meets the program objectives specified in Advisory Circular 121–XX. This means that the operator should develop, submit, and gain FAA approval of guidelines to evaluate repairs to such structure.

It is recognized that operators do not usually have the resources to determine a DSG or to develop repair assessment guidelines, even for a very simple piece of structure. The FAA expects the STC holder to assist the operators in preparing the required documents. If the STC holder is out of business, or is otherwise unable to provide assistance, the operator would have to acquire the FAA-approved guidelines independently. To keep the airplanes in service, it is always possible for operators, individually or as a group, to hire the necessary expertise to develop and gain approval of repair assessment guidelines and the associated DSG. Ultimately, the operator remains responsible for the continued safe operation of the airplane.

The cost and difficulty of developing guidelines for modified structure may be less than that for the basic airplane structure for three reasons. First, the only modifications made by persons other than the manufacturer that are of concern in complying with this proposed rule are those that affect the fuselage pressure boundary. Of those that do affect this structure, many are small enough to qualify as Category A repairs under the repair assessment guidelines, based solely on their size. Second, if the modified structure is identical, or very similar, to the manufacturer's original structure, then only a cursory investigation may be necessary. In such cases, the manufacturer's repair assessment guidelines may be shown to be applicable with few, if any, changes. If the operator determines that a repair to modified structure can be evaluated using the manufacturer's model specific repair assessment guidelines, that determination should be documented and submitted to the operator's PMI or other cognizant airworthiness inspector for approval. For all other repairs, a separate program would need to be developed. Third, the modification may have been made so recently that no repair assessment guidelines would be needed for many years. Compliance with this proposed rule could be shown by establishing the DSG for the new modified structure, calculating an implementation time that is equal to three quarters of that DSG, and then adding a statement to the operations specifications that repair assessment guidelines would be incorporated into the maintenance program by that time. If the modified structure is very similar to the original, then the DSG for the modified structure may also be very similar. No repair assessment guidelines would be needed until 75 percent of that goal is reached. For example, in the case of a large cargo door, such installations are often made after the airplane has reached the end of its useful life as a passenger-carrying airplane. For new structure, the clock would start on repair assessment at the time of installation. Further, since the DSG is measured in cycles, and cargo operation usually entails fewer operational cycles than passenger operations, the due date for incorporation of the repair assessment guidelines for that structure could be many years away.

Compliance with this proposed rule would require that conditions such as those described above be properly documented in each operator's FAA-approved maintenance program; however, the cost of doing so should not be significant. There should be very few examples where the STC holder is unavailable, and the operators must bear the cost of developing a complete repair assessment guidelines document. Guidance on how to comply with this aspect of the proposed rule is also discussed in the accompanying Advisory Circular 120–XX.

7. An operator's repair assessment program would have to include damage-tolerance assessments for new repairs. Repairs made in accordance with the revised version of the SRM would already have a damage-tolerance assessment performed; otherwise, the manufacturer's repair assessment guidelines could be used for this purpose, or operators may develop other methods as long as they achieve the same objectives.

8. Once the airworthiness inspector having oversight responsibilities is

satisfied that the operator's continued airworthiness maintenance or inspection program contains all of the elements of the FAA-approved repair assessment guidelines, the airworthiness inspector would approve an operation specification(s) or inspection program revision. This would have the effect of requiring use of the approved repair assessment guidelines.

In summary, based on discussions with representatives of the affected industry, recommendations from ARAC, and a review of current rules and regulations affecting repair of primary structure, the FAA recognizes the need for a repairs assessment program to be incorporated into the maintenance program for certain transport category airplanes.

The proposed rule would prohibit the operation of certain transport category airplanes operated under 14 CFR parts 91, 121, 125, and 129 beyond a specified compliance time, unless the operator of those airplanes had incorporated FAA-approved repair assessment guidelines applicable to the fuselage pressure boundary in its operation specification(s) or approved inspection program, as applicable.

FAA Advisory Material

In addition to the amendments proposed in this notice, the ARAC has developed Advisory Circular 120–XX, "Repair Assessment of Pressurized Fuselages." This AC would provide guidance for operators of the affected transport category airplanes on how to incorporate FAA-approved repair assessment guidelines into their FAA-approved maintenance or inspection program. Public comments concerning the proposed AC are invited by separate notice published elsewhere in this issue of the **Federal Register**.

Regulatory Evaluation

Changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Finally, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these assessments, the FAA has determined that this proposed rule: (1) Would generate benefits exceeding its costs and is not "significant" as defined in Executive Order 12866; (2) is not "significant" as defined in DOT's Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Regulatory Evaluation Summary

Costs and Benefits

The proposed rule would result in costs to the manufacturers and operators of the affected airplanes and to the FAA. Costs to manufacturers would include revising the Structural Repair Manuals, developing repair assessment guidelines, and developing and conducting training programs for Original Equipment Manufacturers' Engineers, airplane operators' inspectors, and the FAA's PMIs or other cognizant airworthiness inspector. Costs to operators would include inspector training, integrating the assessment program into the maintenance program for each airplane model, assessing and subsequently inspecting repairs, and maintaining records. Cost to the FAA would include PMI/other cognizant airworthiness inspector training and review/approval of assessment programs.

The FAA estimates that the total cost to all affected manufacturers would be $43.3 million over the years 1995 through 2020, or $26.9 million discounted to present value. The equivalent annualized cost would be $2.3 million. Although this proposed rule would not directly impose any costs on manufacturers, the FAA recognizes that manufacturers have incurred, and will continue to incur, costs in order to develop and provide data to operators that will enable them to comply with the proposal. The FAA has chosen to attribute these costs to the proposed rule, beginning in 1995. The total cost to airplane operators would be $25.5 million over the years 1997 through 2020, or $10.2 million discounted to present value. The equivalent annualized cost would be $893,622. The total costs to the FAA would be $516,000, or $324,358 discounted to present value. The equivalent annualized cost would be $28,280. The total cost of the proposed rule to all affected entities would be $69.3 million, or $37.5 million discounted to present value. The equivalent annualized cost would be $3.2 million.

The cause of an airplane accident has never been attributed to a properly applied repair to the airplane models that would be affected by the proposed rule. Nevertheless, airplanes designed and certificated to older technology are operated beyond their original design service objectives, and the FAA has determined that the repair assessment program to ensure the continued airworthiness of these aging airplanes could prevent structural failure and resulting accidents. The benefits of the proposed rule, therefore, are based on the avoidance of such accidents.

The FAA estimates that the prevention of an accident resulting in the loss of an average affected airplane and half its passengers and crew would result in present value benefits of $46.8 million, assuming that the accident would otherwise have occurred midway through the analysis period. The FAA cannot predict the number of accidents that would be prevented by this proposed rule. Based on one such prevented loss, however, the FAA has determined that the proposed rule would be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires a Regulatory Fiexibility Analysis if the proposed or final rule would have significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, prescribes standards for complying with RFA review requirements in FAA rulemaking actions. The Order defines "small entities" in terms of thresholds, "significant economic impact" in terms of annualized cost thresholds, and "substantial number" as a number which is not less than eleven and which is more than one-third of the small entities subject to the proposed or final rule.

The proposed rule would affect Boeing Commercial Airplane Group, Douglas Aircraft Company, Lockheed Aeronautical Systems Company, Airbus, British Aerospace, and Fokker Aircraft B.V. Order 2100.14A specifies a size threshold for classification as a small manufacturer as 75 or fewer employees. Since none of these manufacturers has 75 or fewer employees, the proposed rule would not have a significant economic impact on a substantial number of small manufacturers.

The proposed rule would also affect operators of certain U.S.-registered B707/720, B727, B737, B747, DC–8, DC–9/MD80, DC–10, L–1011, A300, BAC 1–11 and F28 airplanes. Order 2100.14A

specifies a size threshold for classification as a small operator as ownership of 9 or fewer aircraft. The annualized cost thresholds for significant impact, expressed in 1995 dollars, are $119,900 for a scheduled air carrier whose fleet of airplanes have seating capacities of over 60, $67,000 for other scheduled air carriers, and $4,700 for an unscheduled operator. The FAA examined the annualized costs of the proposed rule to "small" operators of the current fleet of affected airplanes and determined that no small operator's annualized cost would exceed the threshold of $4,700. Therefore, the proposed rule would not have a significant impact on a substantial number of small operators.

International Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of American airplanes to foreign countries and the import of foreign airplanes into the United States.

Federalism Implications

The regulations proposed herein will not have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibility among the various levels of the government. Therefore, in accordance with Executive Order 12612, it is determined that this proposed rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this proposed rule would not conflict with any international agreement of the United States.

Paperwork Reduction Act

There are no new requirements for information collection associated with this proposed rule that would require approval from the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the operation of certain transport category airplanes under parts 91, 121, 125, and 129 of Title 14, if could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Conclusion

Because the proposed repair assessment programs are not expected to result in substantial economic cost, the FAA has determined that this proposed regulations is not a significant regulatory action under Executive Order 12866. The FAA has also determined that this proposal is not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 25, 1979). In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, since none are affected. An initial evaluation of this proposal, including a Regulatory Flexibility Determination and an International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

14 CFR Part 91

Aircraft, Aviation safety, Maintenance, Rebuilding, Pressurized fuselage repair and alteration.

14 CFR Parts 121, 125, and 129

Air carriers, Aircraft, Aviation safety, Pressurized fuselage repair assessment, Safety, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR parts 91, 121, 125, and 129 of the Federal Aviation Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. A new § 91.410 is added to read as follows:

§ 91.410 Repair assessment for pressurized fuselages.

No certificate holder may operate an Airbus Model A300, British Aerospace Model BAC 1–11, Boeing Model 707, 720, 727, 737 or 747, McDonnell Douglas Model DC–8, DC–9/MD–80 or DC–10, Fokker Model F28, or Lockheed Model L–1011 airplane beyond the applicable flight cycle implementation time specified in the following paragraphs, or [a date one year after the effective date of the amendment], whichever occurs later, unless repair assessment guidelines applicable to the fuselage pressure boundary (fuselage skin and bulkhead webs) that have been approved by the FAA Aircraft Certification Office (ACO) having cognizance over the type certificate for the affected airplane are incorporated within its inspection program:

(a) For the A300, the flight cycle implementation time is:

(1) Model B2, 36,000 flights.

(2) Model B4–100, 30,000 flights above the window line, and 36,000 flights below the window line.

(3) Model B4–200, 25,500 flights above the window line, and 34,000 flights below the window line.

(b) For all models of the BAC 1–11, the flight cycle implementation time is 60,000 flights.

(c) For all models of the Boeing 707, the flight cycle implementation time is 15,000 flights.

(d) For all models of the Boeing 720, the flight cycle implementation time is 23,000 flights.

(e) For all models of the Boeing 727, the flight cycle implementation time is 45,000 flights.

(f) For all models of the Boeing 737, the flight cycle implementation time is 60,000 flights.

(g) For all models of the Boeing 747, the flight cycle implementation time is 15,000 flights.

(h) For all models of the Douglas DC–8, the flight cycle implementation time is 30,000 flights.

(i) For all models of the Douglas DC–9/MD–80, the flight cycle implementation time is 60,000 flights.

(j) For all models of the Douglas DC–10, the flight cycle implementation time is 30,000 flights.

(k) For all models of the Lockheed L–1011, the flight cycle implementation time is 27,000 flights.

(l) For the Fokker F–28 Mark 1000, 1000C, 2000, 3000, 3000C, and 4000, the flight cycle implementation time is 60,000 flights.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. A new § 121.370 is added to read as follows:

§ 121.370 Repair assessment for pressurized fuselages.

No certificate holder may operate an Airbus Model A300, British Aerospace Model BAC 1–11, Boeing Model 707, 720, 727, 737 or 747, McDonald Douglas Model DC–8, DC–9/MD–80 or DC–10, Fokker Model F28, or Lockheed Model L–1011 airplane beyond the applicable flight cycle implementation time specified in the following paragraphs, or [a date one year after the effective date of the amendment], whichever occurs later, unless its operation specifications have been revised to reference repair assessment guidelines applicable to the fuselage pressure boundary (fuselage skin and bulkhead webs), and those guidelines are incorporated in its maintenance program. The repair assessment guidelines must be approved by the FAA Aircraft Certification Office (ACO) having cognizance over the type certificate for the affected airplane.

(a) For the A300, the flight cycle impelementation time is:

(1) Model B2, 36,000 flights.

(2) Model B4–100, 30,000 flights above the window line, and 36,000 flights below the window line.

(3) Model B4–200, 25,500 flights above the window line, and 34,000 flights below the window line.

(b) For all models of the BAC 1–11, the flight cycle implementation time is 60,000 flights.

(c) For all models of the Boeing 707, the flight cycle implementation time is 15,000 flights.

(d) For all models of the Boeing 720, the flight cycle implementation time is 23,000 flights.

(e) For all models of the Boeing 727, the flight cycle implementation time is 45,000 flights.

(f) For all models of the Boeing 737, the flight cycle implementation time is 60,000 flights.

(g) For all models of the Boeing 747, the flight cycle implementation time is 15,000 flights.

(h) For all models of the Douglas DC–8, the flight cycle implementation time is 30,000 flights.

(i) For all models of the Douglas DC–9/MD–80, the flight cycle implementation time is 60,000 flights.

(j) For all models of the Douglas DC–10, the flight cycle implementation time is 30,000 flights.

(k) For all models of the Lockheed L–1011, the flight cycle implementation time is 27,000 flights.

(l) For the Fokker F–28 Mark 1000, 1000C, 2000, 3000, 3000C, and 4000, the flight cycle implementation time is 60,000 flights.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

1. The authority citation for part 125 continues to read:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

2. A new § 125.248 is added to read as follows:

§ 125.248 Repair assessment for pressurized fuselages.

No certificate holder may operate an Airbus Model A300, British Aerospace Model BAC 1–11, Boeing Model 707, 720, 727, 737 or 747, McDonnell Douglas Model DC–8, DC–9/MD–80 or DC–10, Fokker Model F28, or Lockheed Model L–1011 beyond the applicable flight cycle implementation time specified in the following paragraphs or [a date one year after the effective date of the amendment], whichever occurs later, unless its operation specifications have been revised to reference repair assessment guidelines applicable to the fuselage pressure boundary (fuselage skin and bulkhead webs), and those guidelines are incorporated in its maintenance program. The repair assessment guidelines must be approved by the FAA Aircraft Certification Office (ACO) having cognizance over the type certificate for the affected airplane.

(a) For the A300, the flight cycle implementation time is:

(1) Model B2, 36,000 flights.

(2) Model B4–100, 30,000 flights above the window line, and 36,000 flights below the window line.

(3) Model B4–200, 25,500 flights above the window line, and 34,000 flights below the window line.

(b) For all models of the BAC 1–11, the flight cycle implementation time is 60,000 times.

(c) For all models of the Boeing 707, the flight cycle implementation time is 15,000 times.

(d) For all models of the Boeing 720, the flight cycle implementation time is 23,000 times.

(e) For all models of the Boeing 727, the flight cycle implementation time is 45,000 flights.

(f) For all models of the Boeing 737, the flight cycle implementation time is 60,000 flights.

(g) For all models of the Boeing 747, the flight cycle implementation time is 15,000 flights.

(h) For all models of the Douglas DC–8, the flight cycle implementation time is 30,000 flights.

(i) For all models of the Douglas DC–9/MD–80, the flight cycle implementation time is 60,000 flights.

(j) For all models of the Douglas DC–10, the flight cycle implementation time is 30,000 flights.

(j) For all models of the Lockheed L–1011, the flight cycle implementation time is 27,000 flights.

(l) For the Fokker F–28 Mark 1000, 1000C, 2000, 3000, 3000C, and 4000, the flight cycle implementation time is 60,000 flights.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

1. The authority citation for part 129 continues to read:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

2. A new § 129.32 is added to read as follows:

§ 129.32 Repair assessment for pressurized fuselages.

No certificate holder may operate an Airbus Model A300, British Aerospace Model BAC 1–11, Boeing Model 707, 720, 727, 737 or 747, McDonnell Douglas Model DC–8, DC–9/MD–80 or DC–10, Fokker Model F28, or Lockheed Model L–1011 beyond the applicable flight cycle implementation time specified in the following paragraphs, or [a date one year after the effective date of the amendment], whichever occurs later, unless its operation specifications have been revised to reference repair assessment guidelines applicable to the fuselage pressure boundary (fuselage skin and bulkhead webs), and those guidelines are incorporated in its maintenance program. The repair assessment guidelines must be approved by the FAA Aircraft Certification Office (ACO) having cognizance over the type certificate for the affected airplane.

(a) For the A300, the flight cycle implementation time is:

(1) Model B2, 36,000 flights.

(2) Model B4–100, 30,000 flights above the window line, and 36,000 flights below the window line.

(3) Model B4–200, 25,500 flights above the window line, and 34,000 flights below the window line.

(b) For all models of the BAC 1–11, the flight cycle implementation time is 60,000 flights.

(c) For all models of the Boeing 707, the flight cycle implementation time is 15,000 flights.

(d) For all models of the Boeing 720, the flight cycle implementation time is 23,000 flights.

(e) For all models of the Boeing 727, the flight cycle implementation time is 45,000 flights.

(f) For all models of the Boeing 737, the flight cycle implementation time is 60,000 flights.

(g) For all models of the Boeing 747, the flight cycle implementation time is 15,000 flights.

(h) For all models of the Douglas DC–8, the flight cycle implementation time is 30,000 flights.

(i) For all models of the Douglas DC–9/MD–80, the flight cycle implementation time is 60,000 flights.

(j) For all models of the Douglas DC–10, the flight cycle implementation time is 30,000 flights.

(k) For all models of the Lockheed L–1011, the flight cycle implementation time is 27,000 flights.

(l) For the Fokker F–28 Mark 1000, 1000C, 2000, 3000, 3000C, and 4000, the flight cycle implementation time is 60,000 flights.

Issued in Washington, D.C. on December 22, 1997.

Thomas E. McSweeney,

Director, Aircraft Certification Service.

[FR Doc. 97–34166 Filed 12–31–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 120–XX, Repair Assessment of Pressurized Fuselages

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed advisory circular.

SUMMARY: This notice invites pubic comment on a proposed Advisory Circular (AC) which provides guidance as to acceptable means of accomplishing the requirements of a proposed rule on the subject of repair assessment of pressurized fuselages published elsewhere in the issue of the **Federal Register**

DATES: Comments must be received on or before April 2, 1998.

ADDRESSES: Send all comments on the proposed AC to: Dorenda Baker, Manager, Aging Aircraft Program, ANM–109, FAA Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave SW., Renton, WA 98055–4056. Comments may be examined at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Pat Siegrist, Regulations Branch, ANM–114, FAA Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2126.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify the title of the AC and submit comments in duplicate to the address specified above. All comments received on or before the closing date for comments will be considered by the Transport Airplane Directorate before issuing the final AC.

Discussion

Advisory Circular (AC) 120–xx, Repair Assessment of Pressurized Fuselages, has been written to provide guidance on how to incorporate FAA-approved repair assessment guidelines into an operator's FAA-approved maintenance or inspection program as proposed in [insert notice number], published elsewhere in this issue of the Federal Register. The draft AC provides proposed guidance as to acceptable means of accomplishing the requirements of the rule. The following is a summary of the contents of the AC:

1. Repair Assessment Process. Assessment of existing repairs installed on the fuselage pressure boundary of affected airplanes will establish a damage-tolerance based structural inspection program and replacement times, where needed. Utilizing the repair assessment guidelines developed by the manufacturers of the affected airplanes, two principle techniques have been identified that can be used to accomplish the repair assessment.

2. Implementation. The proposed rule would require the repair assessment guidelines to be approved by the Aircraft Certification Office having cognizance over the type certificate for the affected airplane. The means by which the repair assessment guidelines would be incorporated into the FAA-approved maintenance or inspection program would be subject to the approval of the certificate holder's principle maintenance inspector (PMI) or other cognizant airworthiness inspector.

3. Recommended schedule for accomplishing the repair assessment. The repair assessment activity should be completed in accordance with the schedule in the FAA Approved Repair Assessment Guidelines for each of the affected airplanes. Any necessary corrective actions to be taken as a result of the evaluation would be incorporated into the FAA-approved maintenance or inspection program.

4. New Repairs. The operator would have to assess new repairs using the assessment guidelines, unless the new repairs are accomplished according to structural repair manuals, or any other equivalent method that incorporates damage tolerance methods of design and evaluation. The aircraft manufacturers of the affected models are updating their structural repair manuals to address damage tolerance methodology. FAA Advisory Circular 25.1529–1, "Instructions for Continued Airworthiness of Structural Repairs on transport Airplanes," provides guidance for installing new damage tolerance based repairs.

5. Sale and Transfer of Airplanes. Before an airplane is added to an operator's operations specifications, a program for accomplishment of the repair assessment should be established.

6. Repairs to Structural Modification Certified by a Supplemental Type Certificate (STC). The operator would need to establish a repair assessment program for structure modified by an STC.

Issued in Washington, D.C. on December 22, 1997.

Thomas E. McSweeny,

Director, Aircraft Certification Service.

[FR Doc. 97–34159 Filed 12–31–97; 8:45 am]

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Federal Register

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Friday, January 2, 1998

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FEDERAL REGISTER PAGES AND DATES, JANUARY

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CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS
The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Scoping document; availability and comment request; comments due by 1-9-98; published 11-28-97
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LIST OF PUBLIC LAWS

The List of Public Laws for the 105th Congress, First Session, has been completed. It will resume when bills are enacted into Public Law during the second session of the 105th Congress, which convenes on January 27, 1998.

Note: A Cumulative List of Public Laws was published in the **Federal Register** on December 31, 1997.

Public Laws Electronic Notification Service (PENS)

Note: In order to provide better and faster service, PENS will begin using a new mailing-list management software. Effective January 5, 1998, if you wish to continue or begin receiving notification of newly enacted Public Laws, you will need to resubscribe or subscribe to PENS by sending E-mail to **LISTPROC@ETC.FED.GOV** with the message:

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CFR ISSUANCES 1998
Complete Listing of 1997 Editions and Projected January, 1998 Editions

This list sets out the CFR issuances for the 1997 editions and projects the publication plans for the **January, 1998** quarter. A projected schedule that will include the **April, 1998** quarter will appear in the first **Federal Register** issue of April.

For pricing information on available 1997–1998 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

Titles revised as of January 1, 1997:

Title

CFR Index

1–2 (Revised as of Feb. 1, 1997)

3 (Compilation)

4

5 Parts:
1–699
700–1199
1200–End

6 [Reserved]

7 Parts:
0–26
27–52
53–209
210–299
300–399
400–699
700–899
900–999
1000–1199
1200–1499
1500–1899
1900–1939
1940–1949
1950–1999
2000–End

8

9 Parts:
1–199
200–End

10 Parts:
0–50
51–199
200–499
500–End

11

12 Parts:
1–199
200–219
220–299
300–499
500–599
600–End

13

14 Parts:
1–59
60–139
140–199
200–1199
1200–End

15 Parts:
0–299
300–799
800–End

16 Parts:
0–999
1000–End

Titles revised as of April 1, 1997:

Title

17 Parts:
1–199
200–239
240–End

18 Parts:
1–399
400–End

19 Parts:
1–140
141–199
200–End

20 Parts:
1–399
400–499
500–End

21 Parts:
1–99
100–169
170–199
200–299
300–499
500–599
600–799
800–1299
1300–End

22 Parts:
1–299
300–End

23

24 Parts:
0–199
200–499
500–699
700–1699
1700–End

25

26 Parts:
1 (§§ 1.0-1–1.60)
1 (§§ 1.61–1.169)
1 (§§ 1.170–1.300)
1 (§§ 1.301–1.400)
1 (§§ 1.401–1.440)
1 (§§ 1.441–1.500)
1 (§§ 1.501–1.640)
1 (§§ 1.641–1.850)
1 (§§ 1.851–1.907)
1 (§§ 1.908–1.1000)
1 (§§ 1.1001–1.1400)
1 (§ 1.1401–End)
2–29
30–39
40–49
50–299
300–499
500–599 (Cover only)
600–End

27 Parts:
1–199
200–End

Titles revised as of July 1, 1997:

Title

28 Parts:
0–42
43–End

29 Parts:
0–99
100–499
500–899
900–1899
1900–1910.999
1910.1000–End
1911–1925
1926
1927–End

30 Parts:
1–199
200–699
700–End

31 Parts:
0–199
200–End

32 Parts:
1–190
191–399
400–629
630–699
700–799
800–End

33 Parts:
1–124
125–199
200–End

34 Parts:
1–299
300–399
400–End

35

36 Parts:
1–199
200–299
300–End

37

38 Parts:
0–17
18–End

39

40 Parts:
1–49
50–51
52.01–52.1018
52.1019–End
53–59
60
61–62
63–71
72–80
81–85
86
87–135
136–149
150–189
190–259
260–265
266–299
300–399
400–424 (Cover only)
425–699
700–789
790–End

41 Parts:

Chs. 1–100
Ch. 101
Chs. 102–200
Ch. 201–End

Titles revised as of October 1, 1997:

Title

42 Parts:
1–399
400–429
430–End

43 Parts:
1–999
1000–End

44

45 Parts:
1–199
200–499
500–1199
1200–End

46 Parts:
1–40
41–69
70–89
90–139
140–155
156–165
166–199
200–499
500–End

47 Parts:
0–19
20–39
40–69
70–79
80–End

48 Parts:
Ch. 1 (1–51)
Ch. 1 (52–99)
Ch. 2 (201–299)
Chs. 3–6
Chs. 7–14
Ch. 15–28
Ch. 29–End

49 Parts:
1–99
100–185
186–199
200–399
400–999
1000–1199
1200–End

50 Parts:
1–199
200–599
600–End

Projected January 1, 1998 issuances:

Title

CFR Index
200–End

1–2 (Cover only)

3 (Compilation)

4 (Cover only)

5 Parts:
1–699
700–1199
1200–End

6 [Reserved]

7 Parts:
1–26
27–52
53–209
210–299
300–399
400–699
700–899
900–999
1000–1199
1200–1599
1600–1899
1900–1939
1940–1949
1950–1999
2000–End

8

9 Parts:
1–199
200–End

10 Parts:
1–50
51–199
200–499
500–End

11

12 Parts:
1–199
200–219
220–299
300–499
500–599
600–End

13

14 Parts:
1–59
60–139
140–199
200–1199
1200–End

15 Parts:
0–299
300–799
800–End

16 Parts:
0–999
1000–End

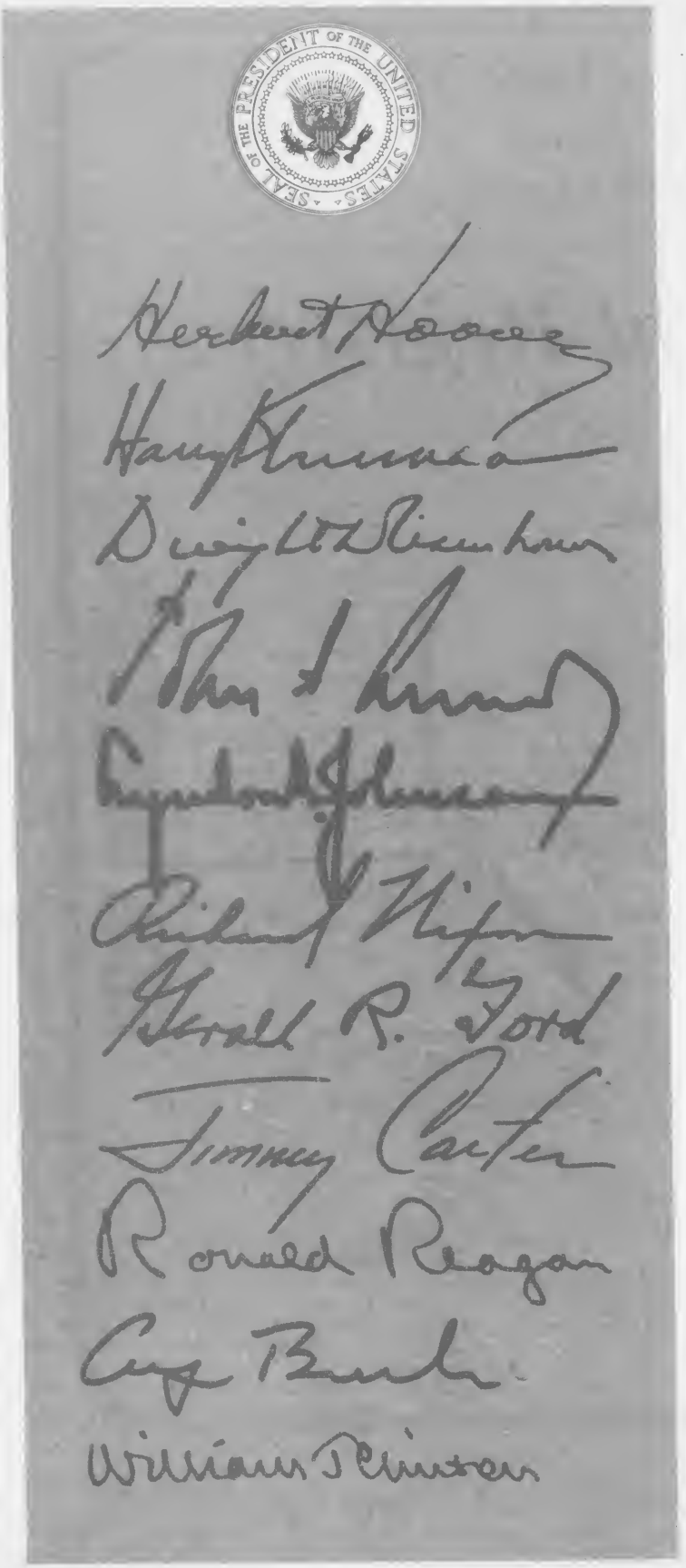
TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 1998

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
January 2	January 20	February 2	February 17	March 3	April 2
January 5	January 20	February 4	February 19	March 6	April 6
January 6	January 21	February 5	February 20	March 9	April 6
January 7	January 22	February 6	February 23	March 9	April 7
January 8	January 23	February 9	February 23	March 9	April 8
January 9	January 26	February 9	February 23	March 10	April 9
January 12	January 27	February 11	February 26	March 13	April 13
January 13	January 28	February 12	February 27	March 16	April 13
January 14	January 29	February 13	March 2	March 16	April 14
January 15	January 30	February 17	March 2	March 16	April 15
January 16	February 2	February 17	March 2	March 17	April 16
January 20	February 4	February 19	March 6	March 23	April 20
January 21	February 5	February 20	March 9	March 23	April 21
January 22	February 6	February 23	March 9	March 23	April 22
January 23	February 9	February 23	March 9	March 24	April 23
January 26	February 10	February 25	March 12	March 27	April 27
January 27	February 11	February 26	March 13	March 30	April 27
January 28	February 12	February 27	March 16	March 30	April 28
January 29	February 13	March 2	March 16	March 30	April 29
January 30	February 17	March 2	March 16	March 31	April 30



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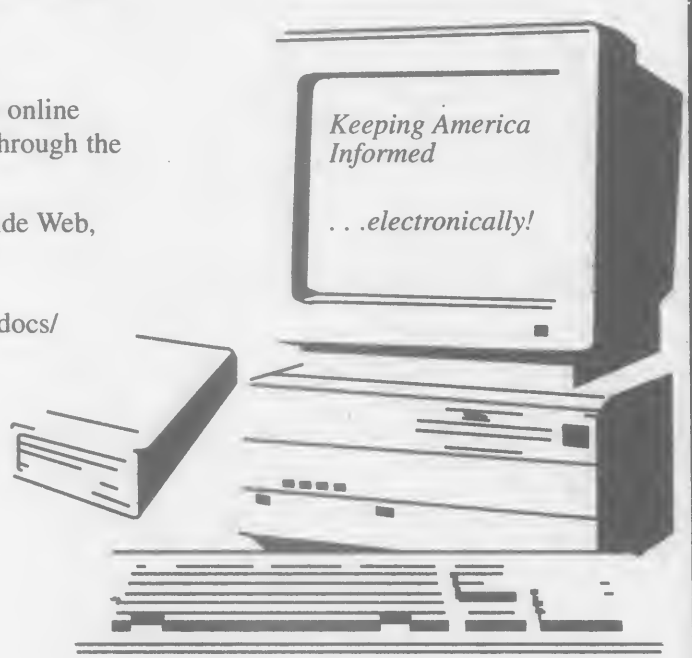

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