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WHEN: November 18, 1997 at 9:00 am.
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RESERVATIONS: 202–523–4538

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

General Crop Insurance Regulations, Canning and Processing Bean Endorsement; and Common Crop Insurance Regulations, Processing Bean Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of processing beans. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current canning and processing bean crop insurance endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current canning and processing bean crop insurance endorsement to the 1997 and prior crop years.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Nesheim, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions on information collection requirements currently being reviewed by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under OMB control number 0563–0053. No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule 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 regulation will not have a significant economic impact on a substantial number of small entities. The amount of work required of insurance companies will not increase because the information used to determine eligibility is already maintained at their office and the other information required is already being gathered as a result of the present policy. No additional actions are required as a result of this action on the part of either the producer or the reinsured company. Additionally, the regulation does not require any action on the part of the small entities than is required on the part of the large entities. 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 listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 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 No. 12988

This final rule has been reviewed in accordance with Executive Order No. 12988 on Civil Justice Reforms. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule 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 any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Thursday, May 1, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 23675 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.155, Processing Bean Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring processing beans found at 7 CFR 401.118 (Canning and Processing Bean Endorsement). FCIC also amends 7 CFR

401.118 to limit its effect to the 1997 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 27 comments were received from a reinsured company and an insurance service organization. The comments received, and FCIC's responses, are as follows:

Comment: An insurance service organization recommended that several definitions common to most crops be put into the Basic Provisions.

Response: The Basic Provisions, which are currently in the regulatory review process, will include definitions of commonly used terms, and this rule will be revised to delete these definitions when the Basic Provisions are published as a final rule.

Comment: An insurance service organization recommended that the sentence in the definition of "bypassed acreage" that states "Bypassed acreage upon which an indemnity is payable will be considered to have a zero yield for Actual Production History (APH) purposes" be deleted since it is addressed elsewhere and does not belong in the definition.

Response: FCIC has deleted the second sentence from, and revised, the definition of bypassed acreage. Provisions have been added in section 3 to explain bypassed acreage when determining approved yield.

Comment: An insurance service organization and a reinsured company expressed concern with the definition of "good farming practices" which makes reference to "cultural practices generally in use in the county * * * recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county." The commenters questioned whether cultural practices that are not explicitly recognized (or possibly known) by the Cooperative State Research, Education, and Extension Service might exist. The commenters indicated that the term "county" in the definition of "good farming practice" should be changed to "area." The insurance service organization also recommended adding the word "generally" before "recognized by the Cooperative State Research, Education, and Extension Service * * *."

Response: The Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing processing beans. If a producer is following practices currently not recognized as acceptable by the CSREES, such recognition can be sought by interested parties. Use of the term "generally" will only create an ambiguity and make the definition more difficult to administer. Although the cultural practices recognized by the CSREES may only pertain to specific areas within a county, the actuarial documents are on a county basis. Therefore, no change has been made.

Comment: An insurance service organization recommended that the definition of "replanting" be clarified by inserting "processing beans" between the last two words ("successful" and "crop") of the sentence.

Response: To be consistent with language contained in the proposed rule of the Basic Provisions, FCIC has revised the definition to clarify that "replanting" is performing the cultural practices necessary to prepare the land to replace the seed of the damaged or destroyed crop and then replacing the seed in the insured acreage.

Comment: An insurance service organization recommended that section 2(c) clarify whether optional units are available if the processor contract stipulates the number of contracted acres, or only if the contract does not specify an amount of production.

Response: FCIC agrees and has amended section 2(a) to clarify that for processor contracts that stipulate a specific amount of production to be delivered, the basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill the processor contract, and optional units will not be established. The language in section 2 has also been revised and reformatted to clearly state the requirements for both the acreage based and production based processor contracts.

Comment: A reinsured company and an insurance service organization asked if, in section 2(f)(3) of the proposed rule, measurement of stored production is applicable to processing beans.

Response: Processing beans are not put into storage before processing. Therefore, FCIC has removed this provision.

Comment: An insurance service organization recommended removal of the opening phrase in section 2(f)(4)(ii) of the proposed rule that states "In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, * * *" since section 2(f)(4) of the proposed rule specifies that "Each optional unit must meet one or more of the following criteria, * * *."

Response: FCIC agrees and has revised section 2(b)(5) of the final rule accordingly.

Comment: An insurance service organization suggested that section 3 should be part of the Basic Provisions since it appears to be standard language in most crop provisions.

Response: The requirement that the price election (for each type, varietal group, etc.) have the same percentage relationship to the maximum price does not apply to all crop policies. FCIC considered this suggestion when it revised the Basic Provisions. Section 3(a) is revised to clarify that the percentage of the maximum price election the insured chooses for one type will be applicable to all other types insured under this policy.

Comment: An insurance service organization stated that section 6, which requires the insured to provide a copy of the processor contract no later than the acreage reporting date, could provide a loophole by allowing producers to wait until acreage reporting time to decide if they want to have coverage.

Response: There is no evidence that allowing the producer to provide a copy of the processor contract as late as the acreage reporting date has resulted in producers waiting to decide until the acreage reporting date if they want coverage. Processing bean producers usually have a processor contract in-force by the final planting date. The requirement to provide a copy of the processor contract with the acreage report is convenient for the producer. Therefore, no change has been made.

Comment: An insurance service organization questioned whether any processor contract would allow interplanted processing beans or processing beans planted into an established grass or legume. The commenter further indicated that consideration should be given to inserting the language in section 7(a)(4) of the proposed rule into the Basic Provisions.

Response: FCIC agrees that processing beans have seldom, if ever, been interplanted with another crop or planted into an established grass or legume. However, production practices are constantly evolving. FCIC chooses to retain the provisions of section 7(a)(3) of the final rule to accommodate such developments if they should occur. In addition, the interplanted language is not consistent among the crop policies and, therefore, will be retained in the crop provisions.

Comment: An insurance service organization indicated that language in section 7(b) that states "You will be considered to have a share in the insured crop if, under the processor contract, you retain possession of the

acreage on which the processing beans are grown, * * *" suggests that only a landlord would have a share in the insured crop. The commenter questioned whether the provision in section 7(b) is already covered in sections 7(a)(1) and (3).

Response: The language in section 7(b) was intended to cover producers who have a crop share agreement, rent, or own acreage. The word "possession" has been changed to "control" for clarification. Section 7(a) specifies requirements for insurance, while section 7(b) specifies requirements for a share in the crop. Therefore, both provisions are necessary.

Comment: A reinsured company and an insurance service organization questioned whether section 9(b), which states that the insurance period ceases on the date you harvested sufficient production to fulfill your processor contract, conflicts with section 12(a) that states, "We will determine your loss on a unit basis." The commenters questioned whether production to count from an appraisal prior to harvest would be included when determining fulfillment of the processor contract. The insurance service organization also questioned if the insured would know when enough production is harvested to fulfill the processor contract. This commenter asked if production in excess of the contracted amount is considered production to count for APH or loss adjustment or whether the processor settlement sheet is an acceptable record. The insurance service organization noted that the provisions in section 9(b) state "* * * the insurance period ends when the production delivered to the processor equals the amount of production stated in the processor contract." However, the commenter questioned whether "delivered to" is the same as "accepted by" the processor.

Response: Section 9(b) does not conflict with section 12(a). For processor contracts based on a stated amount of production, FCIC is only insuring the contract amount and the producer can only obtain basic units by processor contract. Therefore, once the contract is fulfilled, insurance ceases on the unit and there is no payable loss. If the contract is not fulfilled and there is still unharvested production, any insurable cause of loss is covered. With respect to the issue of production from appraised acreage, such production will not count toward fulfillment of the processor contract, although it may be used to determine production to count for the unit or the producer's approved yield if the acreage is not bypassed due to an insurable cause of loss that renders such production unacceptable to the processor. With respect to when the producer would know when the processor contract was fulfilled, records are kept as production is delivered to the processor. Therefore, the producer can determine when the contract was fulfilled. All production from the unit, including any excess of the amount stated in the contract, will be considered as production to count when determining the producer's approved yield. For the purposes of loss adjustment, the amount shown on the settlement sheet, plus any appraised production that was not bypassed due to an insurable cause that rendered the production unacceptable to the processor, will be included as production to count. FCIC has revised section 9(b) to clarify that insurance ceases when the contract is fulfilled if the processor contract stipulates a specific amount of production.

Comment: An insurance service organization questioned the provision in section 10(a)(4), which states that insurance is provided against "Plant disease on acreage not planted to the processing beans the previous crop year, * * * " The commenter assumed this would apply even if a rotation requirement was not specified in the Special Provisions.

Response: This provision has been revised to specify that insurance coverage will be provided against plant disease on acreage not planted to processing beans the previous crop year, unless provided for in the Special Provisions or by written agreement, but not damage due to insufficient or improper application of disease control measures.

Comment: An insurance service organization suggested changing the wording in section 10(a)(8) to eliminate reference to 10(a)(1) through (7) because the causes of loss have been identified.

Response: Referencing 10(a)(1) through (7) makes it clear that failure of the irrigation water supply must be due to these specific causes of loss. Therefore, no change has been made.

Comment: An insurance service organization questioned how to determine or enforce the provision in section 10(b) which states that insurance coverage is not provided if acreage is bypassed based on "* * * the availability of a crop insurance payment."

Response: The adjuster should be able to make this determination based on factors such as a harvest pattern exists that clearly indicates the processor is bypassing producers with crop insurance coverage in favor of producers without crop insurance, even though the quality of the crop is similar. Language has been added to state that an indemnity will be denied or have to be repaid if it is determined that the bypassed acreage was due to the availability of a crop insurance payment.

Comment: An insurance service organization questioned a need for section 9(b) of the proposed rule, which states that the insurance period ends on "The date you harvested sufficient production to fulfill your processor contract," because section 10(b)(5) of the proposed rule states that loss of production will not be insured if it is "Due to damage that occurs to unharvested production after you deliver the production required by the processor contract." The commenter indicated that this provision is not necessary since any damage occurring after delivery would be outside the insurance period, as indicated in section 9(b).

Response: FCIC agrees and section 10(b)(5) has been deleted.

Comment: An insurance service organization stated that the language in section 11(c) does not address timely notice if damage is discovered less than 15 days prior to harvest.

Response: FCIC agrees and has revised section 11(c) to clarify that an immediate notice of loss is required if damage is discovered within 15 days prior to harvest or during harvest.

Comment: An insurance service organization stated that section 12(b), which explains how a claim is settled, is too wordy and difficult to follow.

Response: This section has been revised to clarify the settlement of claims calculation, including the addition of an example.

Comment: An insurance service organization suggested that bypassed acreage payments by the processor be considered to have some value to count as with salvage grains.

Response: There is nothing in this policy which precludes a producer from obtaining any other form of insurance against losses as long as such insurance is not under the Federal Crop Insurance Act. Since the producer contributes to the unharvested acreage pool, such payment will not be considered when determining production to count.

Comment: An insurance service organization asked if section 12(c)(1)(i)(E) of the proposed rule permits bypassed acreage to be appraised as production to count.

Response: FCIC has removed section 12(c)(1)(i)(E) of the proposed rule and added section 12(c)(1)(iii) of the final rule to clarify that production to count includes appraised production on

acreage that is bypassed unless the acreage was bypassed due to a cause of loss which would not be acceptable under the terms of the processor contract.

Comment: An insurance service organization stated that section 12(c)(1)(iii) of the proposed rule should not allow the insured to defer settlement and wait for a later, generally lower, appraisal, especially on crops that have a short "shelf life."

Response: A later appraisal will be necessary only if the insurance provider agrees that such an appraisal would result in a more accurate determination and if the producer continues to care for the crop. If the producer does not continue to care for the crop, the original appraisal will be used. Therefore, no change has been made.

Comment: A reinsured company and an insurance service organization asked if there will be any provisions for late or prevented planting.

Response: FCIC agrees that a late planting period for processing beans may be appropriate for some growing areas. Therefore, section 13 is revised to provide a late planting period if allowed by the Special Provisions and the insured provides written approval from the processor by the acreage reporting date that it will accept the production from the late planted acreage. Prevented planting provision has also been added if available in the Basic Provisions.

Comment: A reinsured company and an insurance service organization suggested that written agreements should not be limited to one year. If no substantive changes occur from one year to the next, allow the written agreement to be continuous.

Response: Written agreements are intended to supplement policy terms or permit insurance in unusual situations that require modification of the otherwise standard insurance provisions. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to minimize written agreement exceptions to assure that the insured is well aware of the specific terms of the policy. Therefore, no change has been made to the requirement that written agreements be renewed each year. FCIC has proposed that the Written Agreement provisions be included in the Basic Provisions.

In addition to the changes described above, FCIC has made the following minor editorial changes and has amended the following Processing Bean Crop Insurance Provisions:

1. Amended and clarified the paragraph preceding section 1 to include the Catastrophic Risk Protection Endorsement.

2. Amended the definitions of "base contract price," "bypassed acreage," "processor," and "processor contract" for clarification. The definition of "practical to replant" is amended to clarify that it will not be considered practical to replant unless the acreage can produce at least 75 percent of the approved yield and the processor agrees in writing that it will accept the production from the replanted acreage. The definition of "processor contract" is amended to clarify that multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract unless the contracts are for different types of processing beans. Added the definitions of "approved yield," "processing beans," and "type." A definition of "broker" is added and pertinent sections of the policy have been revised to accommodate those producers who have a broker as an intermediary with a processor.

3. Section 2—Removed the provision in section 2(a) of the proposed rule that allowed for establishment of a basic unit by snap type beans or lima type beans, if provided for in the Special Provisions. Section 2(b)(5)(C) of the final rule is added to provide optional units by processing bean type. This change makes the provision consistent with other crop provisions offering optional units by type. In addition, the reference to "written agreement" was removed from section 2(b) of the proposed rule and was added to section 2(b)(5) of the final rule to clarify which provision may be revised by written agreement.

4. Section 7—Removed section 7(a)(2) of the proposed rule. This provision is not necessary since section 7(a)(3) of the proposed rule stated that the processing beans must be grown under, and in accordance with, the requirements of a processor contract. If grown under a processor contract, the processing beans will be canned or frozen. Section 7(c) is amended for clarity.

5. Section 9—Changed the end of insurance to October 5 for all processing beans in the states of Idaho, Oregon, and Washington. Section 9(a)(2) is amended to clarify that the insurance period ends when the crop should have been harvested but was not harvested. Also, the word "fresh" has been removed from sections 9(d)(3), (4) and (5) because these Crop Provisions are not applicable to fresh market crops.

6. Section 10—Amended section 10(a) for clarity. Section 10(b) is reformatted and amended for clarity. Also, removed section 10(b)(3) of the proposed rule which stated "Due to processing beans not being timely harvested unless such delay in harvesting is solely and directly due to an insured cause of loss;" because it is unnecessary.

7. Section 11—Clarified that the insured must give notice of loss within 3 days after the date harvest should have started if the acreage will not be harvested. The insured must also provide documentation stating why the acreage is bypassed.

8. Section 12—A new section 12(c)(3) of the final rule is added to clarify that appraised production will include all harvested production from any other insurable units that have been used to fill the processor contract for a unit. Section 12(d) of the proposed rule is deleted because of duplication with section 12(c)(2).

9. Section 14—Clarified that only terms of this policy that are specifically designated for the use of written agreements may be altered by written agreement if the listed conditions are met.

List of Subjects in 7 CFR Parts 401 and 457

Crop insurance, Canning and processing beans, Canning and processing bean endorsement.

Final Rule

Accordingly, for reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401 and 457 as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. The introductory text of § 401.118 is revised to read as follows:

§ 401.118 Canning and processing bean endorsement.

The provisions of the Canning and Processing Bean Endorsement for the 1988 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

3. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

4. Section 457.155 is added to read as follows:

§ 457.155 Processing bean crop insurance provisions.

The Processing Bean Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Processing Bean Crop Provisions

If a conflict exists among the policy provisions the order of priority is as follows: (1) the Catastrophic Risk Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions (§ 457.8) with (1) controlling (2), etc.

1. Definitions

Approved yield. Your yield determined in accordance with 7 CFR part 400 subpart G.

Base contract price. The price stipulated in the processor contract for the grade factor or sieve size that is designated in the Special Provisions, if applicable, without regard to discounts or incentives that may apply.

Broker. A business enterprise that has all the licenses and permits required by the state in which it operates, and has a long term agreement in writing with a processor to purchase and deliver processing beans.

Bypassed acreage. Land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

Days. Calendar days.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Final planting date. The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those required by the bean processor contract with the processing company, and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. The mechanical picking of bean pods from the vines.

Interplanted. Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Planted acreage. Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Processing beans must initially be placed in rows far enough apart to permit mechanical cultivation. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Practical to replant. In lieu of the definition of "Practical to replant" contained in section 1 of the Basic Provisions, practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors including, but not limited to, moisture availability, condition of the field, time to crop maturity, and marketing window, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant unless the replanted acreage can produce at least 75 percent of the approved yield, and the processor agrees in writing that it will accept the production from the replanted acreage.

Processing beans. Lima, snap, or other bean types identified in the Special Provisions that are grown under a processor contract to be canned or frozen and sold for human consumption.

Processor. Any business enterprise regularly engaged in canning or freezing processing beans for human consumption, that possesses all licenses and permits for processing beans required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process the contracted beans within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, or between the producer and a broker, containing at a minimum:

(a) The producer's commitment to plant and grow processing beans, and to deliver the bean production to the processor or broker;

(b) The processor's, or broker's, commitment to purchase all the production stated in the processor contract; and

(c) A base contract price.

Multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract unless the contracts are for different types of processing beans.

Production guarantee (per acre). The number of tons determined by multiplying the approved actual production history yield per acre by the coverage level percentage you elect.

Replanting. Performing the cultural practices necessary to prepare the land to replace the seed of the damaged or destroyed crop and then replacing the seed in the insured acreage.

Timely planted. Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

Ton. Two thousand (2,000) pounds avoirdupois.

Type. A category of processing beans identified as a type in the Special Provisions.

Written agreement. A written document that alters designated terms of this policy in accordance with section 14.

2. Unit Division

For processor contracts that stipulate:

(a) The amount of production to be delivered:

(1) In lieu of the definition of unit in section 1 of the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill the processor contract;

(2) There will be no more than one basic unit for each processor contract;

(3) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(4) Optional units will not be established.

(b) The number of acres to be planted:

(1) Unless limited by the Special Provisions, a unit as defined in section 1 of the Basic Provisions (basic unit) may be divided into optional units if, for each optional unit, you meet all the conditions of this section. Basic units may not be divided into optional units on any basis other than as described in this section;

(2) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you;

(3) All optional units you selected for the crop year must be identified on the acreage report for that crop year;

(4) The following requirements must be met for each optional unit:

(i) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(ii) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit; and

(iii) You must maintain records of marketed production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(5) Each optional unit must meet one or more of the following criteria, as applicable, unless otherwise specified by written agreement:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure, such

as Spanish grants, as the equivalent of sections for unit purposes. In areas that have not been surveyed using sections or their equivalent systems or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(ii) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* Optional units may be based on irrigated acreage and non-irrigated acreage if both are located in the same section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, except the corners of a field in which a center pivot irrigation system is used will be considered as irrigated acreage if separate acceptable records of production from the corners are not provided. If the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit, they will be a part of the unit containing the irrigated acreage. Non-irrigated acreage that is not a part of a field in which a center-pivot irrigation system is used may qualify as a separate optional unit provided that all other requirements of this section are met.

(iii) *Optional Units by Types:* Optional units may be established by type. To qualify as separate optional units, the acreage of one type may not continue into the acreage of another type in the same rows or planting pattern.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election for all the processing beans in the county insured under this policy unless the Special Provisions provide different price elections by type. The percentage of the maximum price elections you choose for one type will be applicable to all other types insured under this policy.

(b) The appraised production from bypassed acreage that could have been accepted by the processor will be included when determining your approved yield.

(c) Acreage that is bypassed because it was damaged by an insurable cause of loss will be considered to have a zero yield when determining your approved yield.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage

In addition to the provisions of section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the processing beans in the county for which a premium rate is provided by the actuarial table:

(1) In which you have a share;

(2) That are grown under, and in accordance with, the requirements of a processor contract executed on or before the acreage reporting date and are not excluded from the processor contract at any time during the crop year; and

(3) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the processing beans are grown, you are at risk of loss, and the processor contract provides for delivery of the processing beans under specified conditions and at a stipulated base contract price.

(c) A commercial processing bean producer who is also a processor or broker may establish an insurable interest if the following requirements are met:

(1) The producer must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the processor or the broker must execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a processor contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure acreage that does not meet any rotation requirements, if applicable, contained in the Special Provisions.

9. Insurance Period

In lieu of the provisions contained in section 11 of the Basic Provisions, regarding the end of the insurance period, insurance ceases at the earlier of:

(a) The date the processing beans:

(1) Were destroyed;

(2) Should have been harvested but were not harvested;

(3) Were abandoned; or

(4) Were harvested;

(b) The date you harvest sufficient production to fulfill your processor contract if the processor contract stipulates a specific amount of production to be delivered;

(c) Final adjustment of a loss; or

(d) The date shown below for the end of the insurance period in the calendar year in which the processing beans would normally be harvested, unless otherwise agreed to in writing, as follows:

(1) October 30 for all processing beans in the state of Arkansas;

(2) October 15 for all processing beans in the states of Delaware, Maryland, and New Jersey;

(3) October 5 for all processing beans in the states of Idaho, Oregon, and Washington;

(4) September 30 for snap beans in the state of New York;

(5) September 20 for snap beans in all other states; or

(6) October 5 for lima beans in all other states.

10. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions:

(a) Insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions, including:

(i) Excessive moisture that prevents the harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and

(ii) Abnormally hot or cold temperatures that cause an unexpected number of acres over a large producing area to be ready for harvest at the same time, affecting the timely harvest of a large number of such acres or the processing of such production is beyond the capacity of the processor, either of which causes the acreage to be bypassed.

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease on acreage not planted to processing beans the previous crop year. (In certain instances, contained in the Special Provisions or in a written agreement, acreage planted to processing beans the previous year may be covered. Damage due to insufficient or improper application of disease control measures is not covered);

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss contained in section 10 (a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure any loss of production due to:

(1) Bypassed acreage because of:

(i) The breakdown or non-operation of equipment or facilities; or

(ii) The availability of a crop insurance payment. We may deny any indemnity immediately in such circumstance or, if an indemnity has been paid, require you to repay it to us with interest at any time acreage was bypassed due to the availability of a crop insurance payment; or

(2) Your failure to follow the requirements contained in the processor contract.

11. Duties In The Event of Damage or Loss

In addition to the notice required by section 14 of the Basic Provisions, you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the processing beans on the unit; or

(2) Discontinuance of harvest on a unit on which unharvested production remains.

(b) Within 3 days after the date harvest should have started on any acreage that will not be harvested unless we have previously released the acreage. You must also provide acceptable documentation of the reason the acreage was bypassed. Failure to provide such documentation will result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested and you wish to destroy the crop, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in each unit. The samples must not be destroyed until the earlier of our inspection or 15 days after notice is given to us; and

(c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, or immediately if damage is discovered during the 15 day period or during harvest. If you fail to notify us and such failure results in our inability to inspect the damaged production, we will consider all such production to be undamaged and include it as production to count. You are not required to delay harvest.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate, acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee, by type if applicable;

(2) Multiplying each result of section 12(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results of section 12(b)(2) if there are more than one type;

(4) Multiplying the total production to count (see section 12(c)), for each type if applicable, by its respective price election;

(5) Totaling the results of section 12(b)(4) if there are more than one type;

(6) Subtracting the results of section 12(b)(4) from the results of section 12(b)(2) if there is only one type or subtracting the results of section 12(b)(5) from the result of section 12(b)(3) if there are more than one type; and

(7) Multiplying the result of section 12(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of snap type processing beans in the unit, with a guarantee of 3.0 tons per acre and a price election of $110.00 per ton. You are only able to harvest 200 tons. Your indemnity would be calculated as follows:

(1) 100 acres × 3.0 tons = 300 tons guarantee;
(2) 300 tons × $110.00 price election = $33,000.00 value of guarantee;
(3) 200 tons × $110.00 price election = $22,000.00 value of production to count;
(4) $33,000.00 − $22,000.00 = $11,000.00 loss; and
(5) $11,000.00 × 100 percent = $11,000.00 indemnity payment.

You also have a 100 percent share in 100 acres of lima type processing beans in the same unit, with a guarantee of 1.0 ton per acre and a price election of $225.00 per ton. You are only able to harvest 75 tons. Your total indemnity for both snap and lima types processing beans would be calculated as follows:

(1) 100 acres × 3.0 tons = 300 tons guarantee for the snap type, and 100 acres × 1.0 ton = 100 tons guarantee for the lima type;
(2) 300 tons × $110.00 price election = $33,000.00 value of guarantee for the snap type, and 100 tons × $225.00 price election = $22,500.00 value of guarantee for the lima type;
(3) $33,000.00 + $22,500.00 = $55,500.00 total value of guarantee;
(4) 200 tons × $110.00 price election = $22,000.00 value of production to count for the snap type, and 75 tons × $225.00 price election = $16,875.00 value of production to count for the lima type;
(5) $22,000.00 + $16,875.00 = $38,875.00 total value of production to count;
(6) $55,500.00 − $38,875.00 = $16,625.00 loss; and
(7) $16,625.00 loss × 100 percent = $16,625.00 indemnity payment.

(c) The total production to count, specified in tons, from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us.

(ii) Production lost due to uninsured causes.

(iii) Production on acreage that is bypassed unless the acreage was bypassed due to an insured cause of loss which resulted in production which would not be acceptable under the terms of the processor contract.

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested.

(2) All harvested processing bean production from the insurable acreage. The amount of such production will be:

(i) The usable tons of processing beans shown on the processor settlement sheet, if available; or

(ii) Determined by dividing the dollar amount paid, payable, or which should have been paid under the terms of the processor contract for the quality and quantity of beans to be delivered to the processor by the base contract price per ton; and

(3) All harvested processing bean production from any other insurable units that have been used to fulfill your processor contract for this unit.

13. Late and Prevented Planting

Late planting provisions are not applicable to processing beans unless allowed by the Special Provisions and you provide written approval from the processor by the acreage reporting date that it will accept the production from the late planted acres when it is expected to be ready for harvest. Prevented planting insurance will be available if contained in the Basic Provisions.

14. Written Agreement

Terms of this policy that are specifically designated for the use of written agreements may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 14(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (if the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy.); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on October 27, 1997.

Suzette M. Dittrich,

Deputy Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–28771 Filed 10–29–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 450 and 457

Prune Crop Insurance Regulations; and Common Crop Insurance Regulations, Prune Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of prunes. The provisions will be used in conjunction with the Common Crop Insurance Policy, Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current prune crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current prune crop insurance regulations to the 1997 and prior crop years.

EFFECTIVE DATE: October 30, 1997.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64313, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions on information collection requirements currently being reviewed by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under OMB control number 0563–0053. No public comments were received.

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 rule 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 rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule 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 regulation will not have a significant economic impact on a substantial number of small entities. The amount of work required of insurance companies will not increase because the information used to determine eligibility is already maintained at their office. The other information required is already being gathered as a result of the present policy. No additional requirements are imposed on the producer or reinsured company as a result of this regulation. Additionally, the regulation does not impose any burden on small entities than it does on large entities. 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 listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 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 No. 12988

This rule has been reviewed in accordance with Executive Order No. 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule 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 any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Thursday, July 10, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 37000 to add to the Common Crop Insurance Regulations (7 CFR part 457) a new section, 7 CFR 457.133, Prune Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring prunes found at 7 CFR part 450 (Prune Crop Insurance Regulations). FCIC also amends 7 CFR part 450 to limit its effect to the 1997 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 13 comments were received from the reinsured companies and an insurance service organization. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization recommended that several definitions common to most crops be put into the Basic Provisions.

Response: The Basic Provisions, which are currently in the regulatory review process, will include definition of commonly used terms and this rule will be revised to delete those definitions when the Basic Provisions are published as a final rule.

Comment: A reinsured company and an insurance service organization expressed concern with the definition of "good farming practice," which states

"* * * recognized by the Cooperative State Research, Education, and Extension Service as compatible * * *" since there may be accepted practices not so recognized. The commenters suggested revising the language to state "generally recognized * * *" and changing the term "county" to "area."

Response: The Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing prunes. If a producer is following practices currently not recognized as acceptable by the CSREES, such recognition can be sought by interested parties. Use of the term "generally recognized" will only make the policy more difficult to administer. Although the cultural practices recognized by CSREES may only pertain to specific areas within a county, actuarial documents are on a county basis. Therefore, no change has been made.

Comment: A reinsured company recommended that in the definition of "irrigated practice," the words "and quality" should be added after the words "* * * providing the quantity."

Response: There are no established criteria regarding the quality of water necessary to produce a crop. The highly variable factors involved would make such criteria difficult to develop and administer. The provisions regarding good farming practices can be applied in situations in which the insured person failed to exercise due care and diligence. Therefore, no change has been made to the definition.

Comment: An insurance service organization and a reinsured company questioned whether the references in section 2(e)(2) to "measurement of stored production" is applicable to prunes. The commenter stated it was not a common practice to store prunes.

Response: FCIC agrees measurement of stored production does not apply to prunes. The provisions have been amended accordingly.

Comment: An insurance service organization expressed concern in discrepancies regarding the provisions contained in section 2(e)(3). The commenter indicated that the proposed rule summary of changes stated section 2(e) contained changes in the provisions to allow optional units on non-contiguous land and for land located in separate sections. The commenter stated 2(e)(3) refers to "one or more of the following criteria," but 2(e)(3)(ii) states that optional units by non-contiguous land are in lieu of establishing optional units by section, section equivalent or FSA Farm Serial Number. The commenter also stated policyholders will need to understand they must qualify for separate optional units and could lose optional units if production was commingled.

Response: FCIC agrees that the provisions in section 2(e)(3) were confusing and that the proposed rule summary of changes did not accurately describe the changes in section 2(e)(3). FCIC has amended the wording contained in section 2(e)(3) to clarify that each optional unit "must also meet one of the following criteria as applicable * * *" In addition, section 2(e)(3)(ii) has been amended to remove language which stated "In lieu of establishing optional units by section, section equivalent or FSA Farm Serial Number." These changes will clarify that optional unit may be established if each optional unit meets one of the following criteria: (1) by section, FSA Farm Serial Number, or their equivalent; or (2) by non-contiguous land.

Comment: An insurance service organization stated that the language in section 10(c) does not address timely notice if damage is discovered less than 15 days prior to harvest.

Response: Section 10(c) provides the notice requirements in the event the insured intends to file a claim for indemnity. Section 10(c) states that notice must be given 15 days prior to the beginning of harvest or immediately if damage is discovered during harvest. In addition, Section 10 states that the requirements contained in section 14 of the Basic Provisions, which requires notice of loss within 72 hours of initial discovery of damage, are applicable. Therefore, no change has been made.

Comment: An insurance service organization stated that it seems unnecessary to refer to previous items by number in section 11. All references make it difficult to follow the calculation sequence.

Response: This section has been explicitly worded to eliminate any misunderstanding or confusion. However, to provide clarification in the calculations, an example of the indemnity calculation has been included.

Comment: An insurance service organization stated that section 11(c)(1)(iv) should not allow the insured to defer settlement and wait for a later, generally lower, appraisal.

Response: A later appraisal will only be necessary if the insurance provider agrees that such an appraisal would result in a more accurate determination and if the producer continues to care for the crop. If the producer does not continue to care for the crop, the original appraisal will be used. Therefore, no change has been made.

Comment: An insurance service organization and two reinsured companies recommended removal of the requirement that written agreements be renewed each year if there are no significant changes to the farming operation. One reinsured company suggested that the written agreement should contain the effective period for each specific agreement because limiting the effective period to one year only increases administrative cost, complexity and the opportunity for misunderstanding.

Response: Written agreements are intended to supplement policy terms or permit insurance in unusual situations that require modification of the otherwise standard insurance provisions. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to minimize written agreement exceptions to assure that the insured is well aware of the specific terms of the policy. Therefore, no change will be made.

In addition to the changes described above, FCIC has made minor editorial changes and has amended the following provisions:

1. Amended the paragraph preceding section 1 to include the Catastrophic Risk Protection Endorsement for the purpose of clarification.

2. Section 2(e)(3)(i)—Revised the language for clarification.

3. Section 9(a)(3)—Clarified wildlife as a cause of loss by deleting the language "unless proper measures to control wildlife have not been taken."

4. Section 9(a)(6)—To be consistent with causes of loss in other Crop Provisions, clarified that failure of the irrigation water supply must be "due to a cause specified in section 9(a)(1) through (5)."

5. Section 11(d)—Clarify any prune production harvested for fresh fruit will be converted to a dried prune weight basis by dividing the total amount (in tons) of fresh fruit production by 3.0. Evidence compiled by FCIC after publication of the proposed rule indicated that 3.0 is a more accurate conversion factor than the value 3.1 contained in the proposed rule.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the prune crop insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The earliest contract change date that can be met for the 1998 crop year is October 31, 1997, and the final rule must be published as soon as possible. It is therefore, imperative that these provisions be

made final so that the reinsured companies may have sufficient time to implement these changes. Therefore, public interest requires the agency to make the rules effective upon publication.

List of Subjects in 7 CFR Parts 450 and 457

Crop insurance, Prunes.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation, hereby amends 7 CFR parts 450 and 457, as follows:

PART 450—PRUNE CROP INSURANCE REGULATIONS FOR THE 1996 AND SUCCEEDING CROP YEARS

1. The authority citation for 7 CFR part 450 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. The part heading is revised to read as set forth above.

3. The Subpart Heading "Subpart-Regulations for the 1986 and Succeeding Crop Years" is removed.

4. Section 450.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 450.7 The application and policy.

* * * * *

(d) The application for the 1986 and succeeding crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Prune Insurance Policy for the 1986 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

5. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

6. Section 457.133 is added to read as follows:

§ 457.133 Prune crop insurance provisions.

The Prune Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Prune Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions (§ 457.8); with (1) controlling (2) etc.

1. Definitions

Days. Calendar days.

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include: selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. Picking of mature prunes from the trees or ground either by hand or machine.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Market price for standard prunes. The price per ton shown on the processor's settlement sheet for each size count of standard prunes.

Natural condition prunes. The condition of prunes in which they are normally delivered from a dehydrator or dry yard.

Non-contiguous land. Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Production guarantee (per acre). The number of tons determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

Prunes. Any type or variety of plums that is grown in the area for the production of prunes and that meets the requirements defined in the applicable Federal Marketing Agreement Dried Prune Order.

Standard prunes. Any natural condition prunes:

(a) That grade "C" or better in accordance with the United States Standards for Grades of Fresh Plums and Prunes; or

(b) That meet or exceed the grading standards in effect for the crop year if a Federal Marketing Agreement Dried Prune Order has been established for the area in which the insured crop is grown.

Substandard prunes. Any natural condition prunes failing to meet the applicable grading specifications for standard prunes.

Ton. Two thousand (2,000) pounds avoirdupois.

Written agreement. A written document that alters designated terms of this policy in accordance with section 12.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 of the Basic Provisions, (basic unit) may be divided into optional units if, for each optional unit, you meet all the conditions of this section.

(b) Basic units may not be divided into optional units on any basis other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(d) All optional units established for a crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have provided records by the production reporting date, that can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) For each crop year, you must have records of marketed production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us;

(3) Each optional unit must also meet one of the following criteria as applicable, unless otherwise allowed by a written agreement:

(i) *Optional units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure such as Spanish grants, as the equivalent of sections for unit purposes. In areas that have not been surveyed using sections or their equivalent, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number; or

(ii) *Optional Units on Acreage Located on Non-Contiguous Land:* Optional units may be established if each optional unit is located on non-contiguous land.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election for all the prunes in the county insured under this policy unless the Special Provisions provide different price elections by varietal group, in which case you may select one price election for each prune varietal group designated in the Special Provisions. The price elections you choose for each varietal group must have the same percentage relationship to the maximum price offered by us for each varietal group. For example, if you choose 100 percent of the maximum price election for one varietal group, you must also choose 100 percent of the maximum price election for all other varietal groups.

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by varietal group if applicable:

(1) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the expected yields below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and any time the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and varietal group if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of interplanting the perennial crop; removal of trees; damage; a change in practices, and any other circumstance that may affect the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is October 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31.

6. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all the prunes in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown for the production of natural condition prunes;

(c) That are grown on tree varieties that:

(1) Were commercially available when the trees were set out;

(2) Are adapted to the area;

(3) Are grown on rootstock that is adapted to the area; and

(4) Are irrigated (except where otherwise provided in the Special Provisions);

(d) That are grown in an orchard that, if inspected, is considered acceptable by us; and

(e) That are grown on trees that have reached at least the seventh growing season after being set out.

7. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance attaching to a crop planted with another crop, prunes interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the insurability requirements contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) Coverage begins for each crop year on March 1.

(2) The calendar date for the end of the insurance period for each crop year is:

(i) October 1 for California; or

(ii) October 15 for Oregon.

(b) In addition to the provisions of section 11 of the Basic Provisions:

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of prunes on or before the acreage reporting date for the crop year and if the acreage was insured by you the previous crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and undergrowth have not been controlled or pruning debris has not been removed from the orchard;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption; or

(6) Failure of the irrigation water supply, if due to a cause specified in section 9(a)(1) through (5) that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available; or

(2) Inability to market the prunes for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing or sold as fresh fruit. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing or is sold as fresh fruit production. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing or sold as fresh fruit will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(c) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest, or immediately if damage is discovered during harvest, so that we may inspect the damaged production.

(d) You must not destroy the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each varietal group, if applicable, by its respective production guarantee;

(2) Multiplying the result of 11(b)(1) by the respective price election for each varietal group, if applicable;

(3) Totaling the results of section 11(b)(2) if there is more than one varietal group;

(4) Multiplying the total production to count (see section 11(c)), of each varietal group if applicable, by its respective price election;

(5) Totaling the results of section 11(b)(4) if there is more than one varietal group;

(6) Subtracting the result of section 11(b)(4) from the result of section 11(b)(2) if there is only one varietal group or subtracting the result of section 11(b)(5) from the result of section 11(b)(3) if there is more than one varietal group; and

(7) Multiplying the result of section 11(b)(6) by your share.

For Example

You have a 100 percent share in 50 acres of varietal group A prunes in the unit, with a guarantee of 2.5 tons per acre and a price election of $630.00 per ton. You are only able to harvest 10.0 tons. Your indemnity would be calculated as follows:

(1) 50 acres × 2.5 tons = 125.0 ton guarantee;
(2) 125.0 tons × $ 630.00 price election = $78,750.00 value of guarantee;
(4) 10.0 tons × $630.00 price election = $6,300.00 value of production to count;
(6) $78,750.00 − $6,300.00 = $72,450.00 loss; and
(7) $72,450.00 × 100 percent = $72,450 indemnity payment.

You also have a 100 percent share in 50 acres of varietal group B prunes in the same unit, with a guarantee of 2.0 ton per acre and a price election of $550.00 per ton. You are only able to harvest 5.0 tons. Your total indemnity for both varietal groups A and B would be calculated as follows:

(1) 50 acres × 2.5 tons = 125.0 ton guarantee for varietal group A and 50.0 acres × 2.0 tons = 100.0 ton guarantee for varietal group B;
(2) 125.0 ton guarantee × $630.00 price election = $78,750.00 value of guarantee for varietal group A and 100.0 ton guarantee × $550.00 price election = $55,000.00 value guarantee for varietal group B;
(3) $78,750.00 + $55,000.00 = $133,750.00 total value guarantee;
(4) 10.0 tons × $630.00 price election = $6,300.00 value of production to count for varietal group A and 5.0 tons × $550.00 price election = $2,750.00 value of production to count for varietal group B;
(5) $6,300.00 + $2,750.00 = $9,050.00 total value of production to count;
(6) $133,750.00 − $9,050.00 = $124,700.00 loss; and
(7) $124,700.00 loss × 100 percent = $124,700 indemnity payment.

(c) The total production to count (in tons) from all insurable acreage on the unit will include all harvested and appraised production of natural condition prunes that grade substandard or better and any production that is harvested and intended for use as fresh fruit. The total production to count will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is sold by direct marketing or sold as fresh fruit if you fail to meet the requirements contained in section 10;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage.

(d) Any prune production harvested for fresh fruit will be converted to a dried prune weight basis by dividing the total amount (in tons) of fresh fruit production by 3.0.

(e) Any production of substandard prunes resulting from damage by insurable causes will be adjusted based on the average size count as indicated on the applicable Dried Fruit Association (DFA) Inspection Report and Certification Form. Any insurable damage will be adjusted by:

(1) Dividing the value per ton of such substandard prunes by the market price per ton for standard prunes (of the same size count); and

(2) Multiplying the result by the number of tons of such prunes.

12. Written Agreements

Terms of this policy which are specifically designated for the use of written agreements may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 12(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or varietal group, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on October 27, 1997.

Suzette M. Dittrich,

Deputy Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–28772 Filed 10–29–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

7 CFR Part 500

National Arboretum

AGENCY: Agricultural Research Service; USDA.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Department of Agriculture (USDA) established a schedule of fees to be charged for certain uses of the facilities, grounds, and services at the United States National Arboretum (USNA).

DATES: Sections 500.22 and 500.23 are effective October 30, 1997.

FOR FURTHER INFORMATION CONTACT: Director, National Arboretum, Beltsville Area, ARS, 3501 New York Avenue, NE., Washington, D.C. 20002; (202) 245–4539.

SUPPLEMENTARY INFORMATION: On September 3, 1997, the USNA published a final rule adopting a schedule of fees to be charged for certain uses of the facilities, grounds and services of the USNA. See 62 FR 46431, September 3, 1997. The final rulemaking document specified that sections 500.22 and 500.23 of that rule would not become effective until approval by the Office of Management and Budget (OMB) of new information collection requirements contained in those sections. The new information collection requirements were approved by OMB on October 6, 1997. See OMB No. 0518–0024. This publication satisfies the statement in the final rule that the USDA would publish a document notifying the public of the effective date of sections 500.22 and 500.23.

Done at Washington, D.C., this 24th day of October, 1997.

Edward B. Knipling,

Acting Administrator, Agricultural Research Service.

[FR Doc. 97–28776 Filed 10–29–97; 8:45 am]

BILLING CODE 3410–03–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV97–905–1 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Florida Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amended interim final rule with request for comments.

SUMMARY: This interim final rule amends a prior interim final rule that limited the volume of small red seedless grapefruit entering the fresh market under the Florida citrus marketing order. The marketing order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (committee). The prior interim final rule limited the volume of size 48 and/or size 56 red seedless grapefruit handlers could ship during the first 11 weeks of the 1997–1998 season that began in September. This rule changes the weekly percentages for the last five weeks of the regulatory period from 30 percent to 35 percent. These revisions will provide a sufficient supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This rule is necessary to help stabilize the market and improve grower returns.

DATES: Effective October 31, 1997 through November 30, 1997. Comments received by November 10, 1997 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299–4770, Fax: (941) 299–5169; or Anne Dec, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5053, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This amended interim final rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to apply to weekly shipments of red seedless grapefruit beginning October 27 through November 30, 1997. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

The order provides for the establishment of grade and size requirements for Florida citrus, with the concurrence of the Secretary. These grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1, and the minimum size requirement is size 56 (at least 3$^{5}/_{16}$ inches in diameter).

Section 905.52 of the citrus marketing order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size that may be shipped by a handler during a particular week is established as a percentage of the total shipments of such variety by such handler in a prior period, established by the committee and approved by the Secretary, in which the handler shipped such variety.

Section 905.153 of the order provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the committee may recommend that only a certain percentage of sizes 48 and/or 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The 11 week period begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the volume of sizes 48 and/or 56 they may ship in a regulated week.

This rule amends an interim final rule published September 12, 1997, in the Federal Register (62 FR 47913). That rule limited the volume of small red seedless grapefruit entering the fresh market for each week of an 11 week period beginning the week of September 15. That rule limited the volume of sizes 48 and/or 56 red seedless grapefruit by establishing a weekly percentage for each of the 11 weeks. This amended interim final rule changes the weekly percentage for the last five weeks of the regulatory period from 30 percent to 35 percent.

This is a change in the percentages originally recommended by the committee. The committee had voted at its May 28, 1997, meeting to establish a weekly percentage of 25 percent for

each of the 11 weeks in a vote of 10 in favor to 7 opposed at its meeting on May 28, 1997. The committee recommended adjusting the percentages at its meeting August 26, 1997, in a vote of 14 in favor to 3 opposed, recommending weekly percentages of 50 percent for the first three weeks (September 15 through October 5), 35 percent for the next three weeks (October 6 through October 26), and at 30 percent for the remainder of the 11 weeks. The committee met again, October 14, 1997, and in a unanimous vote recommended changing the weekly percentage for the last five weeks from 30 percent to 35 percent.

For the past few seasons, returns on red seedless grapefruit have been at all time lows, often not returning the cost of production. On tree prices for red seedless grapefruit have declined steadily from $9.60 per box (1⅗ bushel) during the 1989–90 season, to $3.11 per box during the 1992–93 season, to $1.82 per box during the 1994–95 season, to $1.55 per box during the 1996–97 season. The committee believes that to stabilize the market and improve returns to growers, demand for fresh red seedless grapefruit must be stabilized and increased.

One problem contributing to the current state of the market is the excessive number of small sized grapefruit shipped early in the marketing season. During the past three seasons, sizes 48 and 56 accounted for 34 percent of total shipments during the 11 week regulatory period, with the average weekly percentage exceeding 40 percent of shipments. This contrasts with sizes 48 and 56 representing only 26 percent of total shipments for the remainder of the season. While there is a market for early grapefruit, the shipment of large quantities of small red seedless grapefruit in a short period oversupplies the fresh market for these sizes and negatively impacts the market for all sizes.

For the majority of the season, larger sizes return better prices than smaller sizes. However, there is a push early in the season to get fruit into the market to take advantage of the higher prices available at the beginning of the season. The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower priced fruit on the market that drives down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. is $4 to $6 a carton (⅘ bushel) more than for the smaller sizes. In early October, the f.o.b. for a size 27 averages around $10.00 per carton. This compares to an average f.o.b. of $5.50 per carton for size 56. By the end of the 11 week period outlined in this rule, the f.o.b. for large sizes has dropped to within two dollars of the f.o.b. for small sizes.

In the past three seasons, during the period covered by this rule, prices of red seedless grapefruit have fallen from a weighted average f.o.b. of $7.80 per carton to an average f.o.b. of $5.50 per carton. Even though later in the season the crop has sized to naturally limit the amount of smaller sizes available for shipment, the price structure in the market has already been negatively affected. In the past three years, the market has not recovered, and the f.o.b. for all sizes fell to around $5.00 to $6.00 per carton for most of the rest of the season.

The committee discussed this issue at length at several meetings. The committee believes that the over shipment of smaller sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF–IFAS) in May 1997, found that on tree prices have fallen from a high near $7.00 in 1991–92 to around $1.50 for this past season. The study projects that if the industry elects to make no changes, the on tree price will remain around $1.50. The study also indicates that increasing minimum size restrictions could help to raise returns.

The committee examined shipment data covering the 11 week regulatory period for the last four seasons. The information contained the amounts and percentages of sizes 48 and 56 shipped during each week. They compared this information with tables outlining weekly f.o.b. figures for each size. Based on this statistical information from past seasons, the committee members believe there is an indication that once shipments of sizes 48 and 56 reach levels above 250,000 cartons a week, prices decline on those and most other sizes of red seedless grapefruit. Without volume regulation, the industry has been unable to limit the shipments of small sizes. The committee believes that if shipments of small sizes can be maintained at around 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

The committee has had considerable discussion regarding at what level to establish the weekly percentages. They wanted to recommend weekly percentages that would provide a sufficient volume of small sizes without adversely impacting the markets for larger sizes. At its May 28, 1997, meeting, the committee recommended that the percentage for each of the 11 weeks be established at the 25 percent level. Their reasoning was that this percentage, when combined with the average weekly shipments for the total industry, provided a total industry allotment of 244,195 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. This percentage would have allowed total shipments of small red seedless grapefruit to approach the 250,000 carton mark during regulated weeks without exceeding it.

During committee deliberations at the May 28, 1997, meeting, several concerns were raised regarding the regulation. One area of concern was the possible impact the regulation may have on exports. Several members stated that there was a strong demand in some export markets for small sizes. Other members responded that the percentages set allow handlers enough volume of small sizes to meet the demand in these markets. It was also stated that any shortfall an individual handler might have can be filled by loan or transfer. There was also some discussion that markets that normally demand small sizes have shown a willingness to purchase larger sizes. In addition, committee data indicate that the majority of export shipments occur after the 11 week period when there are no restrictions on small sizes.

Another concern raised was the effect the action would have on packouts. It was stated that the rule could reduce the volume packed, resulting in higher packinghouse costs. The purpose of the recommended rule was to limit the volume of small sizes marketed early in the season. Larger sizes can be substituted for smaller sizes with a minimum effect on overall shipments. The rule might require more selective picking of only the sizes desired, something that many growers are doing already. The UF–IFAS study presented indicated that it would increase returns if growers would harvest selectively and return to repick groves as the grapefruit sized. This also would allow growers to maximize returns on fresh grapefruit by not picking unprofitable grades and sizes of red grapefruit that will be sent to the less profitable processing market. The study also indicated that selective harvesting can reduce the f.o.b. cost per carton, and therefore, have a positive impact on grower returns.

Several members were concerned about what would happen if market conditions were to change. Other committee members responded that if industry conditions were to change (for example, if there was a freeze, or if the grapefruit was not sizing), the committee could meet and recommend

that the percentage be raised to allow for more small sizes, or that the limits be removed all together.

Another concern raised at the May 28, 1997, meeting was that market share could be lost to Texas. According to the Economic Analysis Branch (EAB), of the Fruit and Vegetable Division, of the Agricultural Marketing Service (AMS), limiting shipments of small Florida grapefruit will probably not result in a major shift to Texas grapefruit because the Texas industry is much smaller and has higher freight costs to some markets supplied by Florida. The UF–IFAS study made similar findings. Texas production is much smaller and has been susceptible to freezes that take it out of the market.

This has lessened its impact on the overall grapefruit market.

At the May 28, 1997, meeting, one handler expressed that they ship early in the season and this action could be very restrictive. Members responded that the availability of loans and transfers address these concerns. There was also discussion of how restrictive this rule actually is. Based on shipments from the past four seasons, available allotment would have exceeded actual shipments for each of the first three weeks that are regulated under this rule even if the weekly percentage was set at 25 percent. In the three seasons prior to last season, if a 25 percent restriction on small sizes had been applied during the 11 week period, only an average of 4.2 percent of overall shipments during that period would have been affected. The rule published on September 12, 1997, affected even fewer shipments by establishing less restrictive weekly percentages. In addition, a large percentage of this volume most likely could have been replaced by larger sizes. A sufficient volume of small sized red grapefruit was still allowed into all channels of trade, and allowances were in place to help handlers address any market shortfall.

The committee met again August 26, 1997, and revisited the weekly percentage issue. At the meeting, the committee recommended that the weekly percentages be changed from 25 percent for each of the 11 regulated weeks to 50 percent for the first three weeks (September 15 through October 5), 35 percent for the next three weeks (October 6 through October 26), and 30 percent for the remainder of the 11 weeks.

In its discussion of this change, the committee reviewed the initial percentages recommended and the current state of the crop. The committee also reexamined shipping information from past seasons, looking particularly at volume across the 11 weeks. Based on shipments from the past four seasons, available allotment under a 25 percent restriction would have exceeded actual shipments for each of the first three weeks that are regulated under this rule.

The committee recognized that in terms of available allotment, establishing a weekly percentage of 25 percent for the first three regulated weeks would not be restrictive. However, they said that this was based on total available allotment, not on data for each individual handler. The committee determined that if available allotment would exceed shipments for the first three weeks even when establishing a percentage of 25 percent, it would give individual handlers greater flexibility during these three weeks to establish the percentage at 50 percent. They argued that this would provide each handler with additional allotment during these three weeks, reducing the number of loans and transfers needed to utilize the available allotment, yet having little or no affect on the volume of small sizes. The committee also agreed that setting the percentage at 50 percent rather than 100 percent would still provide some restriction should shipments for September 15 through October 5 for this season exceed past quantities.

For the remainder of the 11 weeks, the committee believed that the weekly percentage needed to be less than 50 percent (which would have resulted in virtually no limitation on shipments of small sizes) but greater than 25 percent. The committee held that it is important to control small sizes, but it is also important to be able to service the markets that demand small sizes. The issue was raised regarding the possible market impact when small sizes exceed 250,000 cartons in a week. The committee recognized that ideally, 244,195 cartons of red seedless grapefruit would be available to the industry for each of the 11 weeks if the percentage was set at 25 percent. However, the committee was concerned that the true amount available would be lower. Several members stated that setting a weekly percentage at 25 percent to approximate the 250,000 cartons was based on total utilization of allotment, and that assumption was unreasonable. The committee agreed that loans and transfers are beneficial, but that even with their availability a percentage of allotment would most likely not be used.

Several other members raised concerns about focusing too much on total allotment available, rather than on allotment available to individual handlers. The committee stated that the way a handler's base is calculated using an average week is probably the most equitable way to do so. However, they acknowledged that it did present some problems. Members concurred that the season for red seedless grapefruit is approximately 33 weeks. However, the members agreed that this did not mean that every handler was shipping during all 33 weeks. They discussed how a handler's average weekly shipments are calculated by averaging their shipments from the past five seasons, and then dividing this number by the 33 weeks to establish an average week. Members stated that the calculated average week was often lower than their actual weekly shipments during the periods they were shipping because they were not shipping during all 33 weeks. They also stated that applying a weekly percentage of 25 percent to their average week would have resulted in limiting their shipments to a level closer to 15 percent of their actual shipments during this period.

Based on this discussion, the committee thought a weekly percentage of 25 percent would be overly restrictive. The committee believed that since total available allotment most probably will not be fully utilized, and how individual handlers are affected, establishing a weekly percentage of 35 percent for the regulation weeks October 6 through October 26 would be more appropriate. They believed this level would provide a sufficient supply of small sizes without exceeding amounts that would negatively affect other markets.

The committee further recommended that the weekly percentage for the remainder of the 11 weeks be established at 30 percent. The committee resolved that a lower percentage was desirable moving into the last five weeks of regulation. The committee believed that as the industry moves into the season and shipments increase, a weekly percentage of 30 percent would provide the best balance between supply and demand for small sized red seedless grapefruit.

At the August 26, 1997, meeting, the concern was raised that the weekly percentages recommended were not restrictive enough. Committee members responded that not all available allotment would be utilized, and that the recommended percentages would still restrict shipments of small sizes, while providing handlers with flexibility to supply those markets that demand small sizes.

After considering the concerns expressed, and the available information, the committee determined that the September 12, 1997, interim

final rule was needed to regulate shipments of small sized red seedless grapefruit.

However, the committee met again October 14, 1997, and revisited the weekly percentage issue. The committee recommended another revision in the weekly percentages. The committee recommended that the weekly percentage for the final five weeks of the regulated period (October 27 through November 30, 1997) be changed from 30 percent to 35 percent.

In its discussion of this change, the committee reviewed the percentages previously recommended and the current state of the crop. In addition, the committee had some new information regarding this season that was not available during its earlier meetings. On October 10, 1997, the Department released its crop estimate for Florida grapefruit. The estimate for total Florida grapefruit was 54 million boxes, a 3.2 percent reduction from last season. In addition, the committee was provided information regarding size distribution developed from a September size survey. The size survey was conducted by the Department as part of the crop estimate and showed that more small sizes were available than anticipated. The committee also had the benefit of having operated several weeks under a weekly percentage regulation.

During the committee's discussion, there were many comments that the use of the weekly percentage rule was being effective. They believed that this rule was having a positive effect on the market and on returns. The weekly percentages, combined with a very limited processing market, has forced the industry to do more spot picking for the available markets.

Several persons attending the committee meeting encouraged the committee to stay the course, and leave the weekly percentages as they were established. However, others thought that the 30 percent weekly percentage rate for the last five weeks of the regulation period might be too restrictive. Concerns were again voiced that the method for calculating allotment base was not always a good approximation of a handler's historical shipments during this 11-week period. Based on the shipment data available for the current season, and shipments from past seasons, total weekly shipments of red seedless grapefruit during the rest of the regulatory period are expected to exceed the average week calculated for the industry of 976,782 cartons. There is also some indication that shipments during the remainder of the regulation period may be greater than in past seasons. With shipments running higher, the committee concluded that establishing a 30 percent weekly percentage rate in combination with the calculated average week would result in available allotment of less than 30 percent of overall shipments.

The committee discussed the merits of changing the established weekly percentage rate for the last five weeks from 30 percent to 35 percent. Such a change represents an additional industry allotment of less than 50,000 cartons. The effect on an individual handler's allotment would be minimal. However, there was discussion that such a change would provide some additional flexibility for handlers.

In addition, having been operating under a weekly percentage for several weeks, members stated that the regulation was being effective and moving to a more restrictive level was unnecessary. Members agreed that one of the most important goals of this regulation was to create some discipline in the way fruit was picked and marketed. Several individuals stated that there are indications from the current and past regulatory weeks that maintaining the weekly percentage at 35 percent for the remainder of the 11 weeks would continue to accomplish this goal.

The committee examined the information on past shipments and on the size distribution information available for the current season. Based on the size survey, 37.6 percent of the crop is size 48 or 56. This amount was somewhat larger than originally expected, indicating that there was a greater volume of smaller sizes than the committee had anticipated. Considering this, and the other information discussed, the committee agreed that establishing a weekly percentage of 35 percent for the remainder of the regulated period would address the goals of this regulation, while providing handlers with some additional flexibility.

The committee again included in its deliberations that if crop and market conditions should change, the committee could recommend that the percentages be increased or eliminated to provide for the shipment of more small sizes. The committee considered the official crop estimate and the information in the UF–IFAS study. Committee members also discussed how the crop was sizing. Using this information on the 1997–98 crop, the committee members believe that establishing the weekly percentages as recommended will provide enough small sizes to supply those markets without disrupting the markets for larger sizes.

Under the procedures in section 905.153, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage for that week. By taking the established weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the volume of sizes 48 and/or 56 they may ship in a regulated week.

An average week was calculated by the committee for each handler using the following formula. The total red seedless grapefruit shipments by a handler during the 33 week period beginning the third Monday in September and ending the first Sunday in May during the previous five seasons were added and divided by five to establish an average season. This average season was then divided by the 33 weeks in a season to derive the average week. This average week is the base for each handler for each of the 11 weeks contained in the regulation period. The applicable weekly percentage is then multiplied by a handler's average week. The total is that handler's allotment of sizes 48 and/or 56 red seedless grapefruit for the given week.

Under this amended interim final rule, the calculated allotment is the amount of small sized red seedless grapefruit a handler can ship. If the minimum size established under section 905.52 remains at size 56, handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established limits. If the minimum size under the order is 48, handlers can fill their allotment with size 48 fruit such that the total of these shipments are within the established limits. The committee staff will perform the specified calculations and provide them to each handler.

To illustrate, suppose Handler A shipped a total of 50,000 cartons, 64,600 cartons, 45,000 cartons, 79,500 cartons, and 24,900 cartons of red seedless grapefruit in the last five seasons, respectively. Adding these season totals and dividing by five yields an average season of 52,800 cartons. The average season is then divided by 33 weeks to yield an average week, in this case, 1,600 cartons. This is handler A's base. Assuming the weekly percentage is 50 percent, this percentage is then applied to the handler's base. This provides this handler with a weekly allotment of 800 cartons (1,600 × .50) of size 48 and/or 56.

The average week for handlers with less than five previous seasons of shipments is calculated by the committee by averaging the total shipments for the seasons they did ship red seedless grapefruit during the immediately preceding five years and dividing that average by 33. New handlers with no record of shipments have no prior period on which to base their average week. Therefore, a new handler can ship small sizes up to the established weekly percentage as a percentage of their total volume of shipments during their first shipping week. Once a new handler has established shipments, their average week is calculated as an average of the weeks they have shipped during the current season.

This amended interim final rule establishes a weekly percentage of 35 percent for the last five weeks of the regulatory period (October 5 through November 30). Each regulation week begins Monday at 12:00 a.m. and ends at 11:59 p.m. the following Sunday, since most handlers keep records based on Monday being the beginning of the work week. If necessary, the committee can meet and recommend changes in the percentages to the Secretary at any time during the regulatory period.

The rules and regulations contain a variety of provisions designed to provide handlers with some marketing flexibility. When regulation is established by the Secretary for a given week, the committee calculates the quantity of small red seedless grapefruit which may be handled by each handler. Section 905.153(d) provides allowances for overshipments, loans, and transfers of allotment. These allowances should allow handlers the opportunity to supply their markets while limiting the impact of small sizes on a weekly basis.

During any week for which the Secretary has fixed the percentage of sizes 48 and/or 56 red seedless grapefruit, any handler can handle an amount of sizes 48 and/or 56 red seedless grapefruit not to exceed 110 percent of their allotment for that week. The quantity of overshipments (the amount shipped in excess of a handler's weekly allotment) will be deducted from the handler's allotment for the following week. Overshipments are not allowed during week 11 because there are no allotments the following week from which to deduct the overshipments.

If handlers fail to use their entire allotments in a given week, the amounts undershipped will not be carried forward to the following week. However, a handler to whom an allotment has been issued can lend or transfer all or part of such allotment (excluding the overshipment allowance) to another handler. In the event of a loan, each party will, prior to the completion of the loan agreement, notify the committee of the proposed loan and date of repayment. If a transfer of allotment is desired, each party will promptly notify the committee so that proper adjustments of the records can be made. In each case, the committee will confirm in writing all such transactions prior to the following week. The committee can also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan is at the discretion of the handlers party to the loan.

The committee computes each handler's allotment by multiplying the handler's average week by the percentage established by regulation for that week. The committee will notify each handler prior to that particular week of the quantity of sizes 48 and 56 red seedless grapefruit such handler can handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Section 8(e) of the Act requires that whenever grade, size, quality or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and/or 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

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

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

There are approximately 80 handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Based on the Florida Agricultural Statistics Service and committee data for the 1995–96 season, the average annual f.o.b. price for fresh Florida red grapefruit during the 1995–96 season was $5.00 per ⅘ bushel cartons for all grapefruit shipments, and the total shipments for the 1995–96 season were 23 million cartons of grapefruit.

Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of grapefruit handlers could be considered small businesses under SBA's definition and about 20 percent of the handlers could be considered large businesses. The majority of Florida grapefruit handlers, and growers may be classified as small entities.

The committee believes that the over shipment of smaller sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. For the past few seasons, returns on red seedless grapefruit have been at all time lows, often not returning the cost of production. On tree prices for red seedless grapefruit have declined steadily from $9.60 per box during the 1989–90 season, to $3.11 per box during the 1992–93 season, to $1.82 per box during the 1994–95 season, to $1.55 per box during the 1996–97 season. The committee believes that to stabilize the market and improve returns to growers, demand for fresh red seedless grapefruit must be stabilized and increased.

Under the authority of section 905.52 of the order, this amended interim final rule limits the volume of small red seedless grapefruit entering the fresh market for each week of the 5 week period beginning the week of October

27. The rule limits the volume of sizes 48 and/or 56 red seedless grapefruit by establishing the weekly percentages at 35 percent for the last five weeks of the regulatory period (October 27 through November 30). Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using the recommended percentage. By taking the recommended percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, the committee calculates a handler's weekly allotment of small sizes. This rule provides a supply of small sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. This rule is necessary to help stabilize the market and improve grower returns.

At the May 28, 1997, meeting, the committee recommended that the percentage for each of the 11 weeks be established at the 25 percent level. They reasoned that this percentage, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of 244,195 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. This percentage would have allowed total shipments of small red seedless grapefruit to approach the 250,000 carton mark during regulated weeks without exceeding it.

At the May 28, 1997, meeting, there was discussion regarding the expected impact of this change on handlers and growers in terms of cost. Discussion focused on the possibility that market share could be lost to Texas and that this rule could increase packinghouse costs. According to EAB, limiting shipments of small Florida grapefruit probably will not result in a major shift to Texas grapefruit because the Texas industry is much smaller and has higher freight costs to some markets supplied by Florida. The UF–IFAS study made similar findings. Texas production is much smaller and has been susceptible to freezes that take it out of the market. This has lessened its impact on the overall grapefruit market.

The concern about packinghouse costs was that volume regulation could mean lower packouts which may increase cost. However, the availability of loans and transfers provides some flexibility. Also, this rule only affects small sizes and only during the 11 week period. By substituting larger sizes and using loans and transfers, packouts should approach the weekly volume of seasons prior to this rule.

A weekly percentage of 25 percent, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of 244,195 cartons of sizes 48 and/or 56 red seedless grapefruit. Based on shipments from the past four seasons, a total available allotment of 244,195 cartons would exceed actual shipments for each of the first three weeks regulated under this rule.

In addition, if a 25 percent restriction on small sizes had been applied during the 11 week period in the three seasons prior to last season, an average of 4.2 percent of overall shipments during that period would have been affected. The September 12, 1997, interim final rule affected even fewer shipments by establishing less restrictive weekly percentages. In addition, a large percentage of this volume most likely could have been replaced by larger sizes. Under that action a sufficient volume of small sized red grapefruit is still allowed into all channels of trade, and allowances are in place to help handlers address any market shortfall. Therefore, the overall impact on total seasonal shipments and on industry cost should be minimal.

The committee also discussed the state of the market and the cost of doing nothing. During the past three seasons, sizes 48 and 56 accounted for 34 percent of total shipments during the 11 week regulatory period, with the average weekly percentage exceeding 40 percent of shipments. For the remainder of the season, sizes 48 and 56 represent only 26 percent of total shipments. While there is a market for early grapefruit, the shipment of large quantities of small red seedless grapefruit in a short period oversupplies the fresh market for these sizes and negatively impacts the market for all sizes.

The early season crop tends to have a greater percentage of small sizes. The large volume of smaller, lower priced fruit drives down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. is $4 to $6 a carton more than for the smaller sizes. In early October, the f.o.b. for a size 27 averages around $10.00 per carton. This compares to an average f.o.b. of $5.50 per carton for size 56. By the end of the 11 week period outlined in this rule, the f.o.b. for large sizes has dropped to within two dollars of the price for small sizes.

In the past three seasons, during the period covered by this rule, prices of red seedless grapefruit have fallen from a weighted average f.o.b. of $7.80 per carton to an average f.o.b. of $5.50 per carton. Even though later in the season the crop has sized to naturally limit the amount of smaller sizes available for shipment, the price structure in the market has already been negatively affected. This leaves the f.o.b. for all sizes around $5.00 to $6.00 per carton for the rest of the season.

As previously stated, the on tree price of red seedless grapefruit has also been falling. On tree prices for fresh red seedless grapefruit have declined steadily from $9.60 per box during the 1989–90 season, to $3.11 per box during the 1992–93 season, to $1.82 per box during the 1994–95 season, to $1.55 per box during the 1996–97 season. In many cases, prices during the past two seasons have provided returns less than production costs. This price reduction could force many small growers out of business. If no action is taken, the UF–IFAS study indicates that on tree returns will remain at levels around $1.50.

The September 12, 1997, interim final rule provided a supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. The committee believes that if the supply of small sizes were limited early in the season, prices can be stabilized at a higher level. This provides increased returns for growers. In addition, if more small grapefruit were allowed to remain on the tree to increase in size and maturity, it could provide greater returns to growers.

The committee surveyed shipment data covering the 11 week regulatory period for the last four seasons and examined tables outlining weekly f.o.b. figures for each size. The committee believed that if shipments of small sizes can be maintained at around 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase. The established weekly percentages, when combined with the average weekly shipments for the total industry, should help maintain industry shipments of sizes 48 and/or 56 red seedless grapefruit at quantities close to the 250,000 carton level per regulated week. A stabilized price that returns a fair market value benefits both small and large growers and handlers.

The 11-week volume regulation may require more selective picking of only the sizes desired, something that many growers are doing already. The UF–IFAS study indicated that returns could increase if growers harvest selectively and return to repick groves as the grapefruit sized. This also allows growers to maximize returns on fresh grapefruit by not picking unprofitable grades and sizes of red grapefruit that are sent to the less profitable processing market. The study indicated that selective harvesting can reduce the f.o.b.

cost per carton. The study also indicates that increasing minimum size restrictions could help to raise returns.

Fifty-nine percent of red seedless grapefruit is shipped to fresh market channels. There is a processing outlet for grapefruit not sold into the fresh market. However, the vast majority of processing is squeezing the grapefruit for juice. Because of the properties of the juice of red seedless grapefruit, including problems with color, the processing outlet is limited, and not currently profitable. Therefore, it is essential that the market for fresh red grapefruit be fostered and maintained. Any costs associated with this action are only for the 11 week regulatory period. However, benefits from this action could stretch throughout the entire 33 week season. Even if this action was successful only in raising returns a few pennies a carton, when applied to 34 million cartons of red seedless grapefruit shipped to the fresh market, the benefits should more than outweigh the costs.

The limits established in the weekly volume regulation are based on percentages applied to a handler's average week. This process was established by the committee because it was the most equitable. All handlers have access to loans and transfers. Handlers and growers both will benefit from increased returns. The costs or benefits of this rule are not expected to be disproportionately more or less for small handlers or growers than for larger entities.

The committee discussed alternatives to the recommended volume regulation. The committee discussed eliminating shipments of size 56 grapefruit all together. Several members expressed that there is a market for size 56 grapefruit. Members favored the percentage rule recommended because it supplies a sufficient quantity of small sizes should there be a demand for size 56. Therefore, the motion to eliminate size 56 was rejected. Another alternative discussed was to do nothing. However, the committee rejected this option, taking in account that returns would remain stagnant without action. Thus, the majority of committee members agreed that weekly percentages should be established as recommended for the shipment of small sized red seedless grapefruit for the 11 week period beginning September 15, 1997.

The committee met again August 26, 1997, and revisited the weekly percentage issue. The committee recommended that the weekly percentages be set to 50 percent for the first three weeks (September 15 through October 5), 35 percent for the next three weeks (October 6 through October 26), and 30 percent for the remainder of the 11 weeks.

In the discussion of that change, the committee reviewed the initial and the revised percentages recommended, the current state of the crop, and shipping information from past seasons. The committee recognized that in terms of available allotment, even establishing a weekly percentage of 25 percent for the first three regulated weeks would not be restrictive. Shipment data from the past four seasons indicate that available allotment under a 25 percent restriction would have exceeded actual shipments for each of the first three weeks that were regulated under the September 12, 1997, rule.

The committee determined that if available allotment would have exceeded shipments for the first three weeks even when establishing a percentage of 25 percent, it would give individual handlers greater flexibility during these three weeks to establish the percentage at 50 percent. They argued that this would provide each handler with additional allotment during these three weeks, reducing the number of loans and transfers needed to utilize the available allotment, yet having little or no affect on the volume of small sizes. The committee also agreed that setting the percentage at 50 percent would still provide some restriction should shipments for this period this season exceed past quantities.

For the remainder of the 11 weeks, the committee believed that the weekly percentage needed to be tighter than 50 percent which would impose nearly no restriction but greater than 25 percent. The issue was raised regarding the possible market impact when small sizes exceed 250,000 cartons in a week. The committee recognized that ideally, 244,195 cartons of red seedless grapefruit would be available to the industry for each of the 11 weeks if the percentage was set at 25 percent. However, the committee was concerned that the true amount available would be lower. Several members stated that setting a weekly percentage at 25 percent to approximate the 250,000 cartons was based on total utilization of allotment, and that assumption was unreasonable. The committee agreed that loans and transfers are beneficial, but that even with their availability a percentage of allotment would most likely not be used.

At the August 27, 1997, meeting, several other members raised concerns about focusing too much on total allotment available, rather than on allotment per handler. Members concurred that the season for red seedless grapefruit is approximately 33 weeks. However, this did not mean that every handler was shipping during all 33 weeks. Using 33 weeks to divide an average season to calculate an average week often resulted in amounts lower than their actual weekly shipments because they were not shipping during all 33 weeks. They stated that applying a 25 percent restriction regulated them at a level closer to 15 percent of their actual shipments during the regulation period.

Based on this discussion, the committee thought a weekly percentage of 35 percent for the regulation weeks October 6 through October 26 would be a more appropriate level. They believe that because total allotment will not be fully utilized and the way individual handlers are affected, this level would provide a sufficient supply of small sizes without overly exceeding amounts that would negatively affect other markets.

The committee further recommended at the August 27, 1997, meeting, that the weekly percentage for the remainder of the 11 weeks be established at 30 percent. The committee resolved that moving into the last five weeks of regulation, a tighter percentage was desirable. The committee believed that as the industry moves into the season and shipments increase, a weekly percentage of 30 percent would provide the best balance between supply and demand for small sized red seedless grapefruit.

However, on October 14, 1997, the committee met again and recommended a further revision to the weekly percentages. The committee recommended that the weekly percentages for the last five weeks of the regulatory period be changed from 30 percent to 35 percent. In its discussion of this change, the committee reviewed the initial percentages recommended and the current state of the crop.

The committee also reviewed some new information regarding this season that was not available during its earlier meetings. On October 10, 1997, the Department released its crop estimate for Florida grapefruit. The estimate for total Florida grapefruit was 54 million boxes, a 3.2 percent reduction from last season. In addition, the committee was provided information regarding size distribution developed from a September size survey. This survey was conducted by the Department and showed a larger percentage of small sizes than anticipated. The committee also had the benefit of having operated several weeks under a weekly percentage regulation.

There were many comments by those attending the meeting that the use of the weekly percentage rule was being effective. Members stated that the rule was having a positive effect on the market and on returns. Overall committee support for the regulation had increased.

The committee considered that the 30 percent weekly percentage rate for the last five weeks of the regulation period may be too restrictive. Reviewing shipment data for the beginning weeks of this season and shipments from past seasons, the committee determined that total weekly shipments during the rest of the regulatory period would exceed the average week calculated for the industry of 976,782 cartons. There was also some discussion that shipments during the remainder of the regulation period may be greater than in past seasons. The committee considered that with shipments running higher, establishing a 30 percent weekly percentage rate in combination with the calculated average week would actually be establishing a rate more restrictive than 30 percent of overall shipments.

The committee discussed the merits of changing the established weekly percentage rate for the last five weeks from 30 percent to 35 percent. Such a change represents an additional industry allotment of less than 50,000 cartons, and should have a minimal impact when distributed to individual handlers. However, members thought that an increase would provide some additional flexibility for handlers.

In addition, having been operating under a weekly percentage for several weeks, members stated that the regulation was being effective and moving to a more restrictive level was unnecessary. Members agreed that one of the most important goals of this regulation was to create some discipline in the way fruit was picked and marketed. Committee members believed that maintaining the weekly percentage at 35 percent for the remainder of the 11 weeks would continue to accomplish this goal.

The committee examined the information on past shipments and on the size distribution information available for the current season. Based on the size survey, 37.6 percent of the crop is size 48 or 56. This amount was somewhat larger than anticipated, indicating that there were more smaller sized red grapefruit than the committee had originally thought. Considering this, and the other information discussed, the committee agreed that establishing a weekly percentage of 35 percent for the remainder of the regulated period would address the goals of this regulation, while providing handlers with some additional flexibility.

This rule changes the requirements under the Florida citrus marketing order. Handlers utilizing the flexibility of the loan and transfer aspects of this action are required to submit a form to the committee. The rule increases the reporting burden on approximately 80 handlers of red seedless grapefruit who will be taking about 0.03 hour to complete each report regarding allotment loans or transfers. The information collection requirements contained in this section have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned OMB number 0581–0094. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Further, the public comments received concerning the proposed rule and previous interim final rule relative to this action did not address the initial regulatory flexibility analysis.

In addition, the committee meetings were widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the May 28, 1997, meeting, the August 26, 1997, meeting, and the October 14, 1997, meeting were public meetings and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on Tuesday, July 29, 1997 (62 FR 40482). A 15-day comment period was provided to allow interested persons to respond to the proposal. Thirty five comments were received. An interim final rule concerning this action was published in the **Federal Register** on Friday, September 12, 1997 (62 FR 47913). Copies of both rules were mailed or sent via facsimile to all committee members and to grapefruit growers and handlers. The rules were also made available through the Internet by the Office of the **Federal Register**.

The 35 comments to the proposed rule were addressed in the interim final rule published in the **Federal Register** on Friday, September 12, 1997 (62 FR 47913).

In the September 12, 1997, interim final rule, a 10-day comment period was provided to allow interested persons to respond to the rule. A 10-day period was deemed appropriate because the rule needed to be in place as soon as possible since handlers began shipping grapefruit in September. The comment period ended September 22, 1997. One comment was received.

As previously stated, subsequent to the end of the comment period, the committee met and recommended modifying its recommendation. The committee recommended that the weekly percentages be changed from 50 percent for the first three weeks (September 15 through October 5), 35 percent for the next three weeks (October 6 through October 26), and 30 percent for the remainder of the 11 weeks as specified in the interim final rule published in September, to 50 percent for the first three weeks (September 15 through October 5), and 35 percent for the remainder of the 11 weeks.

Because of this recommendation, the Department has determined that interested parties should be provided the opportunity to comment on the changes to the interim final rule currently in effect. The Department further believes that extending the comment period with no changes in the percentages in effect limiting the shipments of small red seedless grapefruit during the period of regulation would be detrimental to the industry. Therefore, the Department is amending the current regulations on small red seedless grapefruit through this interim final rule which will allow 10 additional days to comment. The discussion of the comment received in response to the previous interim final rule follows.

One comment was received in opposition to the interim final rule. The comment opposed the rule because in past seasons their house packed only white grapefruit. However, this season, they were able to identify a market for red grapefruit. The comment further stated that because they have no shipments of record for red seedless grapefruit for previous seasons, they have no allotment base.

In establishing procedures by which to limit the percentage of small sized red seedless grapefruit entering the fresh market, the committee envisioned just such a situation, and included provisions to address it. The committee

recognized that new handlers with no record of shipments have no prior period on which to base their average week. Therefore, under the procedures established in section 905.153, a new handler can ship small sizes up to the established weekly percentage as a percentage of their total volume of shipments during their first shipping week. Once a new handler has established shipments, their average week is calculated as an average of the weeks they have shipped during the current season.

In addition, the weekly percentage regulation only applies to sizes 48 and/or 56 red seedless grapefruit. There are no volume restrictions on shipments of larger sized red seedless grapefruit that meet the minimum grade and size requirements under the order.

The commenter further stated that he did not believe that they would have access to transfers or loans. The transfer and loan procedures do not exclude any handler. It is the handler's responsibility to contact other handlers to locate available allotment. The committee staff is available to provide some assistance with locating available allotment. At its October meeting, the committee discussed the transfer and loan procedure. The procedures are being utilized, and based on comments, those seeking additional allotment have, in most cases, been able to acquire it through loans or transfers.

After analyzing the comment received and other available information, including the additional recommendation by the committee, the Department has concluded that this interim final rule is appropriate.

A 10-day comment period is provided to allow interested persons to respond to this proposal. A 10-day period is deemed appropriate because this action amends the weekly regulation period beginning on October 27, through November 30, 1997. Adequate time will be necessary so that any changes, if necessary, can be made to the regulations before the end of the five week period. All written comments timely received will be considered before a final determination is made on this matter.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public intent to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule needs to be in place since handlers have already begun shipping grapefruit. This rule is necessary to help stabilize the market and to improve grower returns. Further, handlers are aware of this rule, which was recommended at public meetings. This action amends the weekly regulation beginning October 27, 1997. Also, a 15-day comment period was provided for in the proposed rule, an additional 10-day comment period was provided for in the interim final rule, and an addition 10-day comment period is provided for in this amended interim final rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 905.601 is revised to read as follows:

§ 905.601 Red seedless grapefruit regulation 101.

The schedule below establishes the weekly percentages to be used to calculate each handler's weekly allotment of small sizes. If the minimum size in effect under section 905.306 for red seedless grapefruit is size 56, handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established weekly limits. If the minimum size in effect under section 905.306 for red seedless grapefruit is 48, handlers can fill their allotment with size 48 red seedless grapefruit such that the total of these shipments are within the established weekly limits. The weekly percentages for sizes 48 and/or 56 red seedless grapefruit grown in Florida, which may be handled during the specified weeks are as follows:

Week	Weekly percentage
(a) 9/15/97 through 9/21/97	50
(b) 9/22/97 through 9/28/97	50
(c) 9/29/97 through 10/5/97	50
(d) 10/6/97 through 10/12/97	35
(e) 10/13/97 through 10/19/97	35
(f) 10/20/97 through 10/26/97	35
(g) 10/27/97 through 11/2/97	35
(h) 11/3/97 through 11/9/97	35
(i) 11/10/97 through 11/16/97	35
(j) 11/17/97 through 11/23/97	35
(k) 11/24/97 through 11/30/97	35

Dated: October 23, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–28823 Filed 10–27–97; 3:42 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV97–984–1 IFR]

Walnuts Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule decreases the assessment rate established for the Walnut Marketing Board (Board) under Marketing Order No. 984 for the 1997–98 and subsequent marketing years. The Board is responsible for local administration of the marketing order which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The 1997–98 marketing year covers the period August 1 through July 31. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective October 31, 1997. Comments received by December 29, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public

inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Diane Purvis, Marketing Assistant, or Mary Kate Nelson, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Marketing Order Administrative Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning August 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule decreases the assessment rate established for the Board for the 1997–98 and subsequent marketing years from $0.0117 to $0.0116 per kernelweight pound of certified merchantable walnuts.

The California walnut marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on September 12, 1997, and unanimously recommended 1997–98 expenditures of $2,391,289 and an assessment rate of $0.0116 per kernelweight pound of merchantable walnuts certified. In comparison, last year's budgeted expenditures were $2,301,869. The assessment rate of $0.0116 is $0.0001 less than the rate currently in effect. The lower assessment rate is needed to bring expected assessment income closer to the amount necessary to administer the program for the 1997–98 marketing year. The quantity of assessable walnuts for 1997–98 is estimated at 207,000,000 kernelweight pounds, or 9,000,000 kernelweight pounds higher than 1996–97. With more assessable walnuts, the current rate of assessment would have generated substantially more funds than needed to meet the Board's financial obligations. Income would have exceeded anticipated expenses by about $31,000. The decrease in the assessment rate in conjunction with the anticipated increase in assessable walnuts should provide adequate assessment income to meet this year's expenses.

The major expenditures recommended by the Board for the 1997–98 marketing year include $240,326 for general expenses, $147,126 for office expenses, $1,928,837 for research expenses, $50,000 for a production research director, and $25,000 for the reserve. Budgeted expenses for these items in 1996–97 were $232,684, $150,508, $1,840,677, $48,000, and $30,000, respectively.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected merchantable certifications of California walnuts for 1997–98. As mentioned earlier, merchantable certifications for the year are estimated at 207,000,000 kernelweight pounds, which should provide $2,401,200 in assessment income (about $10,000 more than estimated expenses). Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within five months after the end of the year.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 1997–98 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 5,000 producers of California walnuts in the production area and approximately 50 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California walnut producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Board and collected from handlers for the 1997–98 and subsequent marketing years from $0.0117 to $0.0116 per kernelweight pound of merchantable walnuts certified. The Board unanimously recommended 1997–98 expenditures of $2,391,289 and an assessment rate of $0.0116 per kernelweight pound of merchantable walnuts certified. The assessment rate of $0.0116 is $0.0001 less than the 1996–97 rate. The quantity of assessable walnuts for the 1997–98 marketing year is estimated at 207,000,000 kernelweight pounds. Thus, the $0.0116 rate should provide $2,401,900 in assessment income and be adequate to meet this year's expenses.

The Board's increase in budgeted expenses from $2.301,869 to $2,391,289 is due primarily to increases in the following line item categories—administrative and office salaries, research programs, and the production research director. Expenses for these items for 1997–98, with last year's budgeted expenses in parentheses, are: administrative and office salaries—$148,080 ($142,000), research programs—$1,928,837 ($1,840,677), and production research director—$50,000 ($48,000).

The primary reason for the reduced assessment rate is an anticipated increase in merchantable walnuts expected to be certified during the 1997–98 marketing year. As mentioned earlier, the quantity of assessable walnuts for 1997–98 is estimated at 207,000,000 kernelweight pounds, or 9,000,000 kernelweight pounds higher than in 1996–97. The decrease in the assessment rate in conjunction with the increase in shipments should provide adequate assessment income to meet this year's expenses. Assessment income is expected to total $2,401,900. This is about $10,000 more than 1997–98 budgeted expenses. At the current rate, assessment income would have exceeded expenses by about $31,000, which was unacceptable to the Board.

Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within five months after the end of the year.

The Board reviewed and unanimously recommended 1997–98 expenditures of $2,391,289, which included increases in administrative and office salaries, and research programs. Prior to arriving at this budget, the Board considered information from various sources, such as the Board's Budget and Personnel Committee, the Research Committee, and the Market Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the walnut industry. The assessment rate of $0.0116 per kernelweight pound of merchantable walnuts certified was then determined by dividing the total recommended budget by the quantity of assessable walnuts, estimated at 207,000,000 kernelweight pounds for the 1997–98 marketing year. This would produce assessment income of about $2,401,900. This is approximately $10,000 above the anticipated expenses, which the Board determined to be acceptable.

Data for recent seasons and projections for the upcoming season indicate that anticipated 1997–98 assessment revenue as a percentage of total grower revenue could range between 2 and 2.5 percent.

This action reduces the assessment obligation imposed on handlers. While this rule imposes some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 12, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1997–98 marketing year began on August 1, 1997, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable walnuts handled during such marketing year; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

On and after August 1, 1997, an assessment rate of $0.0116 per kernelweight pound is established for California merchantable walnuts.

Dated: October 24, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–28824 Filed 10–29–97; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB75

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Cumulative Voting; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under part 615 on September 24, 1997 (62 FR 49907). The final rule amends the regulations to provide that a Farm Credit Bank (FCB or bank) may eliminate cumulative voting in director elections with the consent of 75 percent of the bank's association shareholders. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is October 30, 1997.

EFFECTIVE DATE: The regulation amending 12 CFR part 615 published on September 24, 1997 (62 FR 49907) is effective October 30, 1997.

FOR FURTHER INFORMATION CONTACT:

Gaylon J. Dykstra, Policy Analyst, Policy Development and Risk Control, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498;

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a) (9) and (10))

Dated: October 27, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–28808 Filed 10–29–97; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–15]

Amendment to Class E Airspace; Aurora, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Aurora, MO.

DATES: The direct final rule published at 62 FR 43275 is effective 0901 UTC, October 31, 1997.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on August 13, 1997 (62 FR 43275). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 31, 1997. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on September 18, 1997.

H. J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97–28751 Filed 10–29–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97–ACE–16]

Amendment to Class E Airspace; Keokuk, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Keokuk Municipal Airport, Keokuk, IA. The FAA has developed a Localizer/Distance Measuring Equipment (LOC/DME) Runway (RWY) 26 Standard Instrument Approach Procedure (SIAP) utilizing the LOC and DME of the Instrument Landing System (ILS). Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP, and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new LOC/DME RWY 26 SIAP in controlled airspace. The intended effect of this rule is to provided additional controlled airspace for aircraft arriving at the Keokuk Municipal Airport.

DATES: Effective date: 0901 UTC April 23, 1998. Comment date: Comments must be received on or before January 15, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–16, 601 East 12th Street, Kansas City, MO 64106.

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

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

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

SUPPLEMENTARY INFORMATION: The FAA has developed a LOC/DME RWY 26 SIAP utilizing the LOC and DME of the ILS at Keokuk Municipal Airport, Keokuk, IA. The amendment to Class E airspace at Keokuk, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAP in controlled airspace and thereby facilitate separation of aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is

incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–16." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE IA E5 Keokuk, IA [Revised]

Keokuk Municipal Airport, IA
(Lat. 40°27'36"N., long. 91°25'43"W.)
Keokuk NDB
(Lat. 40°27'45"N., long. 91°26'01"W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Keokuk Municipal Airport and within 2.6 miles each side of the 310° bearing from the Keokuk NDB extending from the 6.6 miles radius to 7 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on August 26, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–28750 Filed 10–29–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97–ACE–25]

Amendment to Class E Airspace; Pella, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Pella Municipal Airport, Pella, IA. The FAA has developed a Global Positioning System (GPS) Runway (RWY) 16 Standard Instrument Approach Procedure (SIAP) to serve the Pella Municipal Airport. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP. The enlarged area will contain the new GPS RWY 16 SIAP in controlled airspace. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the GPS RWY 16 SIAP.

DATES: Effective date: 0901 UTC, April 23, 1998. Comment date: Comments must be received on or before January 15, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–25, 601 East 12th St., Kansas City, MO 64106.

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

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

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

SUPPLEMENTARY INFORMATION: The FAA has developed a GPS RWY 16 SIAP to serve the Pella Municipal Airport, Pella, IA. The amendment to Class E airspace at Pella, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain a new SIAP within controlled airspace and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Although this action is in the form of a final rule and was to preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–25." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE IA E5 Pella, IA [Revised]

Pella Municipal Airport, IA
(Lat. 41°24′02″N., long. 92°56′45″W.)
Pella NDB
(Lat. 41°24′19″N., long. 92°56′36″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Pella Municipal Airport and within 2.6 miles each side of the 175° bearing from the Pella NDB extending from the 6.4-mile radius to 9 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on September 12, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–28749 Filed 10–29–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–10]

Amendment to Class E Airspace; Anniston, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Anniston, AL. Global Positioning System (GPS) Runway (RWY) 3 and RWY 21 Standard Instrument Approach Procedures (SIAP) have been developed for Talladega Municipal Airport, and a GPS RWY 20 SIAP has been developed for St. Clair County Airport. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5576.

SUPPLEMENTARY INFORMATION:

History

On July 29, 1997, the FAA proposed to amend 14 CFR part 71 by modifying Class E airspace at Anniston, AL (62 FR 40488). This action would provide adequate Class E airpsace for Instrument Flight Rules (IFR) operations at Talladega Municipal and St. Clair County Airports.

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

Interested parties were invited to participate in this rulemaking proceeding by submitting when comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to 14 CFR Part 71 modifies Class E airspace at Anniston, AL. Global Positioning RWY 3 and RWY 21 SIAPs have been developed for Talladega Municipal Airport, and a GPS RWY 20 SIAP has been developed for St. Clair County Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs.

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

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO FL E5 Anniston, AL [Revised]

Anniston Metropolitan Airport, AL
(Lat. 33°35'17" N, long. 85°51'29" W)
Talladega Municipal Airport
(Lat. 33°34'12" N, long. 86°03'04" W)
St. Clair County Airport
(Lat. 33°33'32" N, long. 86°14'57" W)

That airspace extending upward from 700 feet above the surface within a 12-mile radius of Anniston Metropolitan Airport and within a 9.5-mile radius of Talladega Municipal Airport and within a 11.5-mile radius of St. Clair County Airport, excluding that airspace within Restricted Area R–2101 when the restricted area is active.

* * * * *

Issued in College Park, Georgia, on October 8, 1997.

Wade T. Carpenter,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 97–28748 Filed 10–29–97; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release No. 33–7472; 34–39269]

Rule to Provide That the Commission Will Not Accept Paper Filings That are Required To Be Filed Electronically

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adding a rule to the series of rules governing the submission of filings and other documents through the Electronic Data Gathering, Analysis, and Retrieval system. The new rule provides that the Commission will not accept any paper filing that is required to be filed electronically, unless it satisfies the requirements for a temporary or continuing hardship exemption.

EFFECTIVE DATE: The rule is effective on January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Margaret R. Black, Division of Corporation Finance, (202) 942–2933, or Ruth Armfield Sanders, Division of Investment Management, (202) 942–0633, U.S. Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The U.S. Securities and Exchange Commission (the "Commission") is adding new Rule 14 to Regulation S–T [1] under the Securities Act of 1933 ("Securities Act").[2]

[1] 17 CFR Part 232.

[2] 15 U.S.C. 77a *et seq.*

I. Discussion

The Commission's filing rules mandate electronic filing by registrants and certain others via the Commission's Electronic Data Gathering and Retrieval ("EDGAR") system.[3] Most companies were phased into the electronic system in groups between 1993 and 1996; by May, 1997, when small business filers were completely phased into the electronic filing system, all domestic issuers were required to file most documents electronically.[4] EDGAR filings are available on the Commission's Internet web site within 24 to 48 hours of filing, and commercial databases provide the information even sooner. The electronic filing system has made filings more easily and more quickly available to the investing public.

Most filers either regularly and promptly submit filings via the EDGAR system or apply for an exemption before the required filing date. The high level of compliance with the rules requiring electronic filing draws attention to the fact that some filers have continued to make their filings in paper without requesting a hardship exemption. In May 1997, for example, when approximately 23,750 filings were submitted electronically, the Commission received approximately 8,850 paper filings, of which approximately 500 should have been filed electronically.[5] These paper filings create a gap in the EDGAR database because all paper filings, whether or not filed pursuant to an exemption, are currently accepted and treated as valid filings.[6] The gap in the electronic database is detrimental to an investing public that relies on the prompt availability and dissemination of filed information. Those who rely primarily on the EDGAR database may not even be aware that the information is on file with the Commission.

The Commission's rules take into account the possibility that under certain circumstances electronic filing may be difficult or impossible by allowing filers relief from electronic filing through hardship exemptions. Filers may claim or request, as appropriate, hardship exemptions based on certain criteria, including, for example, technical difficulties in filing, and undue burden and expense of conversion to electronic format.[7] A temporary hardship exemption, generally for unanticipated technical difficulties, is available automatically but must be followed, within six business days, by a confirming electronic copy so that the electronic database is complete.[8] A continuing hardship exemption is also available, but must be granted by the staff. It may be granted for a specific period (after which a confirming electronic copy must be filed) or for an indefinite period.[9]

While the rules acknowledge the possible impediments to electronic filing, they also impose sanctions on issuers that do not comply with the electronic filing rules (and that fail to request an exemption, or fully comply with the requirements of the exemption). The sanctions include the inability to use certain short form registration statements,[10] the inability to incorporate the paper filing by reference into other filings,[11] and the tolling of certain tender offer periods.[12]

Neither the availability of the hardship exemptions nor the sanctions provided by the rules have completely eliminated paper filings that are filed inappropriately without a hardship exemption. The Commission believes that there is a strong public interest in decreasing the number of non-compliant filings. First, electronic filing makes information available more quickly than paper filing. The electronic filing system is the most efficient and effective way of disseminating filed information to the public. Each filing in paper format that is not the subject of an exemption creates an information gap for a marketplace that has come to rely on EDGAR for immediate and complete access. Second, it appears unfair to those filers who comply with the filing rules to accept the filings of those who do not. Finally, paper filings are more costly to the Commission because they require more staff time to process, maintain, track and retrieve. Paper filings prevent the Commission's staff from taking full advantage of the efficiencies of electronic filing for processing, tracking and staff review of filings. Paper filings also disrupt the continuity of preserving records permanently in an electronic format.

The Commission has determined, therefore, that the EDGAR filing rules should be revised to provide that documents that are required to be filed electronically will not be accepted for filing in paper format in the absence of an available exemption. In reaching this decision, the Commission also considered that the phase-in period for electronic filing has been complete for over a year, giving filers ample time to become familiar with and to comply with the electronic filing requirements. The Commission believes that a specific rule providing for the rejection of non-compliant filings will help to decrease the number of paper filings. The Office of Filings and Information Services will be instructed not to accept paper submissions that should have been filed electronically.[13] Those brought by courier will be given back to the courier, and those sent by mail or other delivery service will be returned by mail. If a filing is required to be filed within a certain period (*e.g.*, ninety days from the end of the fiscal year for annual reports on Form 10–K), the rejection of an improper paper filing would result in a filer failing to meet its disclosure obligations unless the document is

[3] Rules 101 and 102 of Regulation S–T [17 CFR 232.101 and 17 CFR 232.102].

[4] Rule 101(a) of Regulation S–T [17 CFR 232.101(a)] specifically excepts "foreign private issuers and foreign governments" from the persons and entities subject to mandated electronic filing. In the future, the Commission will consider whether such filings should be required to be made electronically.

[5] The other paper filings were filings from foreign private issuers or foreign governments, filings submitted in paper pursuant to a hardship exemption, and filings on forms not yet required to be filed electronically.

[6] The Commission staff screens all paper filings to determine if they should have been filed on EDGAR. If the submission should have been filed electronically, the staff calls or writes to the filer, and asks the filer to file an electronic copy of the document, or to apply for a hardship exemption if appropriate.

[7] Rule 201 of Regulation S–T (temporary hardship exemption) [17 CFR 232.201] and Rule 202 of Regulation S–T (continuing hardship exemption) [17 CFR 232.202].

[8] Rule 201 requires paper filings relying on the temporary hardship exemption to be accompanied by a Form TH, Notification of Reliance on Temporary Hardship Exemption, and in the case of exhibits, Form SE, Form for Submission of Paper Format Exhibits by Electronic Filers.

[9] Rule 202(a) states that requests for a continuing hardship exemption must be submitted at least ten days in advance of filing. Requests must be submitted by either filers or their counsel, and the request may be submitted by fax to the Office of EDGAR Policy in the Division of Corporation Finance at (202) 942–9542. Questions about hardship exemptions should be directed to that Office at (202) 942–2940. Investment company filers should direct their requests and inquiries to the Investment Management EDGAR Branch at (202) 942–0591.

[10] See, *e.g.*, Instruction I.H to Form S–2 [17 CFR 239.12]. Forms S–3 [17 CFR 239.13], S–8 [17 CFR 239.16b], F–2 [17 CFR 239.32] and F–3 [17 CFR 239.33] contain similar provisions. See also the note to Rule 101(a) of Regulation S–T [17 CFR 232.101(a)], Note 1 to Rule 201(b) of Regulation S–T [17 CFR 232.101(b)] and Note 3 to Rule 202(d) of Regulation S–T [17 CFR 232.101(d)].

[11] Rule 303 of Regulation S–T [17 CFR 232.303].

[12] Rule 13e–4(f)(12) [17 CFR 240.13e–4(f)(12)] and Rule 14e–1(e) [17 CFR 240.14e–1(e)].

[13] Filers submitting paper filings in reliance on a hardship exemption must include on the first page of the filing the legend stating that the filer is relying on a hardship exemption. See Rule 201(a)(2) of Regulation S–T [17 CFR 232.201(a)(2)] and Rule 202(c) of Regulation S–T [17 CFR 232.202(c)].

submitted electronically by the due date.[14]

The Commission is aware that the immediate result of returning a paper submission will be that access to the information will be delayed until the sender re-submits it in electronic format, because the filing will not be available even in paper format through the Commission's public reference facilities. In order to minimize this delay, the staff will use its best efforts to notify senders of the problem promptly so they can take immediate steps to re-submit the documents. As filers become accustomed to this policy, improved compliance with the EDGAR rules can be expected. The result will be an improvement in the timeliness of information available to the public.

The Commission also considered whether to revise the rules providing for sanctions. It has been argued that the current rules create an inference that the Commission will accept paper filings because the penalty is imposed in the event a filing is improperly submitted in paper format. The Commission believes that the creation of a general rule providing for the rejection of paper filings where the filing does not satisfy the requirements of a hardship exemption will clear up any possible misinterpretation of the rules. As with its other rules, the Commission will use any appropriate means, including its authority to bring legal actions, to enforce the electronic filing rules. In addition, keeping the current sanctions will provide a backup system of penalties that would apply to a paper filing that is accepted in error. The Commission therefore believes that a change to the rules imposing sanctions is not necessary or appropriate at this time.

II. Effective Date

The new rule is effective on January 1, 1998, and applies to filings made after that date, including amendments to filings made earlier.

III. Certain Findings

Since the new rule relates solely to agency organization, procedure, or practice, publication for notice and comment is not required under the Administrative Procedure Act.[15] It follows that the requirements of the Regulatory Flexibility Act [16] do not apply.

[14] The only date the Commission will consider in determining compliance with the disclosure requirements will be the filing date of the electronically transmitted document.

[15] 5 U.S.C. 553(b).

[16] 5 U.S.C. 601–612.

The new rule does not come within the scope of the Paperwork Reduction Act of 1995 [17] because the new rule is not a substantive or material change to a collection of information.[18]

Under 5 U.S.C. 804, this rule is exempt from the definition of the term "rule" for purposes of Chapter 8, entitled "Congressional Review of Agency Rulemaking," since the rule is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

Section 23(a)(2) [19] of the Securities Exchange Act of 1934 (the "Exchange Act") [20] requires the Commission to consider the anti-competitive effects of any rules it adopts thereunder, if any, and the reasons for its determination that any burden on competition imposed by such rules is necessary or appropriate to further the purposes of the Exchange Act. Because the new rule does not effect any substantive change, it will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

IV. Cost-Benefit Analysis

The benefits of this new procedural rule clearly exceed the costs. The amendment should benefit the investing public by increasing the number of documents filed electronically and therefore the public's knowledge of and timely access to the information in the documents. Based on filings made in May of 1997, the rule could result in an additional 500 filings per month being made electronically rather than on paper. This assumes that all paper filings made without a hardship exemption would have been filed electronically if the new rules had been in effect. Of course, it is possible that one result of the rule will be that more filers will request and receive hardship exemptions. However, any burden resulting from an increase in applications for hardship exemptions is likely to be minimal and only constitutes the costs of complying with an existing standard.

Furthermore, Section 2 of the Securities Act [21] and Section 3 of the Exchange Act,[22] as amended by the recently enacted National Securities Markets Improvement Act of 1996,[23] provide that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission also shall consider, in addition to the protection of investors, whether the act will promote efficiency, competition, and capital formation. Because the amendments will increase the amount of information available on a timely basis to the investing public, the new rule is in the public interest and will promote the efficient dissemination of such information. The new rule will not affect efficiency, competition or capital formation because it does not result in a material change in capital raising or regulatory compliance costs.

[17] 44 U.S.C. 3501 *et seq.*

[18] 5 CFR 1320.5(g).

[19] 15 U.S.C. 78w(a)(2).

[20] 15 U.S.C. 78a *et seq.*

[21] 15 U.S.C. 77b.

[22] 15 U.S.C. 78c.

[23] Pub. L. No. 104–290, § 106, 110 Stat. 3416 (1996).

V. Statutory Basis

The rule is proposed pursuant to Sections 6, 7, 8, 10 and 19(a) of the Securities Act, Sections 3, 12, 13, 14, 15(a), 23(a) and 35A of the Exchange Act, Sections 3, 5, 6, 7, 10, 12, 13, 14, 17 and 20 of the Public Utility Holding Company Act of 1935,[24] Section 319 of the Trust Indenture Act of 1939,[25] and Sections 8, 30, 31 and 38 of the Investment Company Act of 1940.[26]

List of Subjects in 17 CFR Parts 232

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

2. By adding § 232.14 to read as follows:

§ 232.14 Paper filings not accepted without exemption.

The Commission will not accept in paper format any filing required to be submitted electronically under Rules 100 and 101 of Regulation S–T (§§ 232.100 and 232.101 respectively), unless the filing satisfies the requirements for a temporary or continuing hardship exemption under

[24] 15 U.S.C. 79a *et seq.*

[25] 15 U.S.C. 77aaa *et seq.*

[26] 15 U.S.C. 80a–1 *et seq.*

Rule 201 or 202 of Regulation S–T (§§ 232.201 or 232.202 respectively).

By the Commission.

Dated: October 24, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28704 Filed 10–29–97; 8:45 am]

BILLING CODE 8010–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure; E–Z Trial

CFR Correction

In title 29 of the Code of Federal Regulations, part 1927 to end, revised as of July 1, 1997, on page 261, in § 2200.203, paragraph (a) should be removed and reserved.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CCGD08–97–020]

RIN 2115–AE84

Regulated Navigation Area Regulations; Mississippi River, LA-Regulated Navigation Area

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is revising the Regulated Navigation Area (RNA) for vessels operating in the Mississippi River below Baton Rouge, Louisiana including South Pass and Southwest Pass by adding additional requirements for vessels of 1,600 gross tons or greater operating in the RNA. This revision requires enhanced safety procedures for vessels of 1,600 gross tons or greater operating on the Mississippi River. The Coast Guard is also requiring moored or anchored passenger vessels with embarked passengers to maintain a manned pilothouse watch for the safety of the vessel, crew and passengers.

DATES: This interim rule is effective October 30, 1997. Comments must reach the Coast Guard on or before December 29, 1997.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the Eighth Coast Guard District Marine Safety Division, 501 Magazine Street, Room 1341, New Orleans, LA during normal office hours between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–4686.

FOR FURTHER INFORMATION CONTACT: Mr. M. M. Ledet, Vessel Traffic Management Specialist, at the Eighth Coast Guard District Marine Safety Division, New Orleans, LA or by telephone at (504) 589–4686.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments specifically pertaining to 33 CFR § 165.810(f)(3)(iii) of this rule. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD08–97–020) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Regulatory Information

On August 29, 1997 (62 FR 45775), the Coast Guard published a notice of proposed rulemaking entitled "Regulated Navigation Area Regulations; Mississippi River, LA-Regulated Navigation Area" in the **Federal Register.** No public hearing was requested and none was held. The Coast Guard received 2 letters commenting on the proposed rulemaking. Based on information presented in one of the comments, concerning proposed 33 CFR 165.810(f)(3)(iii), the Coast Guard is reconsidering this provision. This rule is being published as an interim rule and the Coast Guard requests all interested parties to comment on 33 CFR 165.810(f)(3)(iii).

On December 14, 1996, the 36,000 gross ton M/V BRIGHT FIELD, while transiting the Lower Mississippi River, allided with the Riverwalk store complex in New Orleans, Louisiana causing extensive damage and numerous injuries. This marine casualty prompted the Captain of the Port New Orleans to issue Captain of the Port Orders to moored or anchored high capacity passenger vessels operating on the Mississippi River. These orders required those vessels to maintain a manned pilothouse watch in order to monitor river activity and to be immediately available to activate emergency procedures to protect the vessel, crew and passengers in the event of an emergency radio broadcast, danger signal or other visual indication of a problem. The initial intent of this order was to establish an interim measure to prevent future allisions and collisions.

On March 18, 1997 (62 FR 14637, March 27, 1997), the Coast Guard established a temporary regulated navigation area affecting the operation of downbound tows in the Lower Mississippi River from mile 437 at Vicksburg, MS to mile 88 above Head of Passes. These regulations were subsequently amended on March 21 (62 FR 15398, April 1, 1997), March 29 (62 FR 16081, April 4, 1997), April 4 (62 FR 17704, April 11, 1997) and April 20 (62 FR 23358, April 30, 1997). The amendments added additional operating requirements for vessels of 1,600 gross tons or greater; increased the operating limitations on tank barges and ships carrying hazardous chemicals and gasses; and extended the RNA to the boundary of the territorial sea at the approaches to Southwest Pass and South Pass of the Mississippi River.

This RNA and its subsequent amendments was also prompted by unprecedented high waters on the Mississippi River. Conditions on the Lower Mississippi River became so sever that it necessitated the opening of the Bonnet Carre Spillway by the Army Corps of Engineers in order to ease high-water conditions and partially combat very strong river currents. The high-water conditions contributed to numerous barge breakaways and a marked increase in vessel accidents. The additional operating requirements were designed to provide a greater margin of safety for vessels of 1,600 gross tons or greater operating on this waterway.

On April 20 (62 FR 23358, April 30, 1997), the towboat and barge limitations and the chemical and gas ship operating restrictions expired. The regulations affecting self-propelled vessels of 1,600 gross tons or greater were extended until

July 1, 1997. On June 24, 1997 (62 FR 35097, June 30, 1997), the regulations affecting self-propelled vessels of 1,600 gross tons or greater were again extended until October 31, 1997. The purpose of this extension was to maintain the enhanced margin of safety that had been facilitated by these regulations. Although the Lower Mississippi River was receding, dangerous and unpredictable currents remained.

This rule makes permanent the requirements of the temporary RNA, 33 CFR 165.T08–001, and adds those requirements to the permanent RNA established in 33 CFR 165.810. There was no adverse feedback from the public on the extensions or the concomitant operating requirements. Moreover, the additional operating requirements imposed by the temporary RNA increased the level of safety in the RNA. The interim rule is effective immediately upon expiration of the temporary RNA so that there will be no lapse either in watch requirements for anchored or manned passenger vessels and in operating requirements for vessels 1,600 gross tons or greater. A lapse would have a detrimental impact on vessel safety in the RNA. Because of safety considerations, and given the fact that the temporary RNA has been in effect for over six months, good cause exists for making this rule effective upon publication in the **Federal Register.**

Background and Purpose

In the interest of navigation safety in the narrow confines of the Lower Mississippi River, the Coast Guard is making permanent the temporary regulations in 33 CFR 165.T08–001 affecting self-propelled vessels of 1,600 gross tons or greater. The Coast Guard is incorporating the temporary regulations into the permanent regulations at 33 CFR 165.810. The regulated navigation area described in this rule is required to protect vessels, bridges, shoreside facilities, commercial businesses and the public from a safety hazard created by deep-draft vessel operations along the Lower Mississippi River. During 1995 and 1996 over 300 self-propelled vessels of 1,600 gross tons or greater operating on the Mississippi River experienced casualties involving loss of power, loss of steering or engine irregularities. The regulations will enhance the safety of navigation on the river and protect shoreside facilities, including commercial businesses, by causing masters and engineers to take measures that will minimize the risk of steering casualties, engine failures and engine irregularities. They also place the ship in a manning status and operating condition that will allow the vessel to take prompt and appropriate emergency action should a casualty occur, thereby reducing the likelihood of a cascading series of allisions and collisions following a casualty.

As an enhanced safety precaution for passenger vessels anchored or moored within the regulated navigation area, the Coast Guard is requiring certain passenger vessels to maintain a manned pilothouse watch to monitor river and/or waterway activity and to be immediately available to activate emergency procedures to protect the vessel, crew and passengers in the event of an emergency radio broadcast, danger signal or other visual indication of a problem. This measure will significantly enhance the safety of passenger vessels moored or anchored within the regulated navigation area. Each ferryboat, and each small passenger vessel that operates with 49 or less passengers, will be required to monitor and respond, but may conduct monitoring form a vantage point other than the pilothouse using a portable radio. These vessels were give consideration because of their relatively small size and associated reduced risk while passengers are aboard.

Discussion of Interim Rule

The existing regulation in 33 CFR § 165.810 establishes a Regulated Navigation Area for the waters of the Mississippi River below Baton Rouge, LA, including South Pass and Southwest Pass. By this rule the Coast Guard adds specific operational requirements to certain vessels when transiting, moored or anchored in the Regulated Navigation Area. These requirements are designed to assist in the prevention of allision, collision and grounding, ensure port safety, enhance the safety of moored or anchored passenger vessels and protect the navigable waters of the Mississippi River from environmental harm.

Subsection (e) of this rule addresses additional operating requirements for passenger vessels with embarked passengers. Passenger vessels shall continuously man the pilothouse and remain apprised of river activities in their vicinity by monitoring VHF emergency and working frequencies. This allows an individual operating a passenger vessel to be immediately available to take necessary action to protect the vessel, crew and passengers in the event that an emergency broadcast, danger signal or visual indication of a problem is received or detected. An exception to this rule is made for any ferryboat or small passenger vessel that operates with 49 or fewer passengers. These vessels are not required to continuously man the pilothouse since personnel may monitor VHF frequencies via a portable radio from a vantage point other than the pilothouse.

Subsection (f) of this rule pertains to all self-propelled vessels of 1,600 or more gross tons covered by 33 CFR Part 164. The rule requires that the master shall ensure the vessel is in compliance with 33 CFR Part 164 and that the engine room is manned at all times while the vessel is underway in the RNA. Additionally, this subsection requires the master to ensure the chief engineer has certified that: the main propulsion plant is ready in all aspects for operations including the main propulsion air start systems, fuel systems, lube oil systems, cooling systems and automation systems; automatic or load limiting throttle systems are operating in the manual mode with engines available to immediately answer maneuvering commands; cooling, lubricating and fuel oil systems are within proper temperature parameters; and standby systems are ready to be placed immediately in service. These additional operating conditions are required so long as the vessel is underway in the RNA.

Discussion of Comments and Changes

The Coast Guard received two comments regarding the proposed rulemaking. One comment stated that the proposed rule as written will detrimentally affect the safety of a particular company's operation. It stated that the proposed requirement in 33 CFR Part 165.810(f)(3)(iii), that requires "[a]utomatic or load limiting main propulsion plant throttle systems [to be] operated in the manual mode with engines available to immediately answer maneuvering commands," will reduce the level of safety presently maintained by the company's vessels. The comment explained that the company's vessels presently utilize engine control systems designed to be operated from the bridge. The comment also indicated the control systems can override any of the automatic stop or load limiting functions from the bridge, the engine control room or the emergency maneuvering platform on the engine side. The comment also indicated the company's vessels have the full range of engine speed from all stations. The comment further indicated that requiring operation of the engine control system in the manual mode from the engine control room removed one engineer from emergency response

capabilities and that maneuvering in the manual mode put one more human element into the engine control system. The comment also noted that the company has safety management practices in place that address the concerns expressed in 33 CFR Part 165.810(f)(3)(iii). The comment further recommended that the proposed rule in 33 CFR Part 165.810(f)(3)(iii) be replaced with 33 CFR Part 164.13(b) and that the rule apply to all vessels. The latter regulation requires that "[e]ach tanker must have an engineering watch capable of monitoring the propulsion system, communicating with the bridge, and implementing manual control measures immediately when necessary. The watch must be physically present in the machinery spaces or in the main control space and must consist of at least a licensed engineer."

The Coast Guard agrees in part with that portion of the comment asserting that 33 CFR Part 165.810(f)(3)(iii) could adversely impact the safety of vessels. It is possible that different engine room configurations could cause confusion at to what precisely "manual mode" entails. For example, one master could interpret manual mode as requiring operation of the main engine from the engine-side throttle control while another could read this regulation as allowing engine room watch personnel to operate the main engine from the control booth. This confusion, and the possibility of automatic control systems being placed in jeopardy if main propulsion throttle system computer programs are deactivated or placed in a manual override mode in order to achieve a "manual mode" state, warrants further study by the Coast Guard. The Coast Guard is also reopening to the public a 60 day comment period to specifically address 33 CFR Part 165.810(f)(3)(iii). This will allow the Coast Guard to better ascertain the impact of this subsection upon the public.

Replacing 33 CFR 165.810(f)(3)(iii) with 33 CFR 164.13(b) as recommended in the comments does not address operation of the engines in the manual mode and therefore does not provide the margin of safety the Coast Guard may ultimately find necessary. The proposed regulation does tie at least one engineering watchstander to the engine room for watch responsibilities, limiting that engineer's availability for response to casualties elsewhere. However, the Coast Guard believes the presence of a licensed engineer in the engine room, capable of immediate communications with the bridge, is essential to the safety of the vessel and the port. No changes to the proposed rule were made.

The second comment noted that the proposed rule, as written, would force towboats and tugboats to comply with the same operational requirements that apply to deep-draft vessels even though the requirements are ill-suited for towing operations. The comments noted that the language in the proposed rule does not take into account a recent change to 33 CFR Part 164. In the past, 33 CFR Part 164 only applied to self-propelled vessels of 1,600 or more gross tons. However, the Final Rule on Navigation Safety Equipment for Towing Vessels, published in the July 3, 1996, **Federal Register** (61 FR 35064), amended 33 CFR Part 164 to include "towing vessels of 12 meters or more in length." As a result of this change, the proposed rule would have the unintended result of requiring towboats and tugboats to comply with requirements that do not apply to their mode of operation. The Coast Guard agrees with this comment. The intent of the proposed rule was that it apply only to vessels of 1,600 gross tons or greater, not to towboats or tugboats. The rule has been amended to eliminate this unintended result.

For purposes of clarity and to be more consistent with other sections of this part, the upper boundary of this RNA is no longer defined by the words, "* * * below Baton Rouge." Lower Mississippi River mile 233.9 above Head of Passes will now define the upper limit of this RNA by replacing the words "* * * below Baton Rouge" as found in 33 CFR § 165.810 (a) and (b). This language will more precisely delineate the upper boundary of the RNA thereby avoiding potential confusion as to the exact location of "* * * below Baton Rouge."

Regulatory Evaluation

This interim rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1997). The Coast Guard expects the economic impact of this interim rule to be so minimal that full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The regulation does not require that additional personnel are required aboard each vessel, rather it requires that existing watchstanding personnel to be immediately available to take necessary action to respond to vessel emergencies. This interim rule establishes additional requirements in order to enhance vessel safety and better protect property within the RNA. In the event this rule imposes additional costs the Coast Guard believes this burden is far outweighed by the safety benefits accrued from the rule. The prevention of another M/V BRIGHT FIELD-type allision would save shoreside businesses, maritime users and the public in general, tens of millions of dollars in potential property damage and personal injury.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers the economic impact on small entities of each rule for which a general notice of proposed rulemaking is required. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. Because the rule affects deep-draft vessels underway and passenger vessels when passengers are onboard, and because a ferryboat or small passenger vessel carrying 49 people or less may monitor river activities using a portable radio from a vantage point other than the pilot house, the Coast Guard's position is that this rule will not have a significant economic impact on a substantial number of small entities.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Assistance for Small Entities

In accordance with section 214(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this interim rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Mr. M.M. Ledet, Vessel Traffic Management Specialist, at the Eighth Coast Guard District Marine Safety

Division, New Orleans, LA or by telephone at (504) 589–4686 for assistance.

Collection of Information

This interim rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this interim rule and concluded that under paragraph 2.B.2(e)(34)(g) of Commandant Instruction M16475.1B (as revised by 61 FR 13563; March 27, 1996), this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (waters), Reporting and recordkeeping requirements, Safety measures, and Waterways.

In consideration of the foregoing, the Coast Guard amends Part 165 of Title 33, Code of Federal Regulations to read as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 46 CFR 1.46.

2. In section 165.810, paragraph (a) and (b) introductory text are revised, and new paragraphs (e) and (f) are added to read as follows:

§ 165.810 Mississippi River, LA-regulated navigation area.

(a) *Purpose and applicability.* This section prescribes rules for all vessels operating in the Lower Mississippi River below mile 233.9 above Head of Passes including South Pass and Southwest Pass, to assist in the prevention of allisions; collisions and groundings so as to ensure port safety and protect the navigable waters of the Mississippi River from environmental harm resulting from those incidents, and to enhance the safety of passenger vessels moored or anchored in the Mississippi River.

(b) Lower Mississippi River below mile 233.9 above Head of Passes including South and Southwest Passes:

* * * * *

(e) Watch requirements for anchored and moored passenger vessels.

(1) Passenger Vessels. Except as provided in paragraph (e)(2) of this section, each passenger vessel with one or more passengers on board, shall:

(i) Keep a continuously manned pilothouse and;

(ii) Monitor river activities and marine VHF emergency and working frequencies of the port so as to be immediately available to take necessary action to protect the vessel, crew and passengers in the event that an emergency radio broadcast, danger signal or visual indication of a problem is received or detected.

(2) Each ferryboat, and each small passenger vessel that operates with 49 or less passengers, may monitor river activities using a portable radio from a vantage point other than the pilothouse.

(f) All self-propelled vessels of 1,600 or more gross tons subject to the regulations at 33 CFR Part 164 shall also comply with the following:

(1) The engine room shall be manned at all times while underway in the RNA.

(2) Prior to embarking a pilot when entering or getting underway in the RNA, the master of each vessel shall ensure that the vessel is in compliance with 33 CFR Part 164.

(3) The master shall ensure that the chief engineer has certified that the following additional operating conditions will be satisfied so long as the vessel is underway within the RNA:

(i) The main propulsion plant is in all respects ready for operations including the main propulsion air start systems, fuel systems, lubricating systems, cooling systems and automation systems;

(ii) Cooling, lubricating and fuel oil systems are at proper operating temperatures;

(iii) Automatic or load limiting main propulsion plant throttle systems are operating in manual mode with engines available to immediately answer maneuvering commands; and

(iv) Main propulsion standby systems are ready to be immediately placed in service.

Dated: October 24, 1997.

T.W. Josiah,

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

[FR Doc. 97–28745 Filed 10–29–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 212

Administration of the Forest Development Transportation System

AGENCY: Forest Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment streamlines Forest Service rules for administration of the forest transportation system. This amendment was initiated by agency review under the President's Regulatory Reinvention Initiative and is intended to provide clearer, more precise direction for the administration of the forest development transportation system.

DATES: This rule is effective October 30, 1997.

FOR FURTHER INFORMATION CONTACT: Richard W. Sowa, Engineering Staff, Forest Service, USDA, P.O. 96090, Washington, D.C. 20090–6090, (202) 205–1437.

SUPPLEMENTARY INFORMATION: The purpose of this technical amendment is to consolidate direction for the administration of the forest development transportation system. The rules formerly under the separate sections, headed "Allocation, Forest development transportation plan, and Program of work" are now consolidated under one section, "Forest development transportation program."

Following a review of Forest Service regulations under the President's Regulatory Reinvention Initiative, the agency concluded that these sections were so closely related that they should be combined into one streamlined regulation. Also in keeping with National Performance Review objectives of using "plain English" in regulations, the text of sections 212.3 and 212.4 (now section 212.1 (b) and (c) has been edited to remove extraneous words. However, no substantive changes have been made to the rule. Accordingly, by this amendment, the agency is setting out the revised rule in the Code of Federal Regulations. Because of the narrow scope and limited effect of this action, the agency has determined that this amendment is a technical amendment for which notice and comment pursuant to the Administrative Procedures Act (5 U.S.C. 553) is not necessary.

Regulatory Impact

This rule is a technical amendment to consolidate three small sections of an

existing rule. As such, it has no substantive effect nor is it subject to review under USDA procedures or Executive Order 12866 on Regulatory Planning and Review. This rule also does not meet the definition of a rule subject to Congressional notice and review pursuant to 5 U.S.C. 801–804.

Moreover, because good cause exists to exempt this rule from notice and comment pursuant to 5 U.S.C. 553, this rule is exempt from further analysis under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538); Executive Order 12778, Civil Justice Reform; Executive Order 12630, Takings Implications; and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 36 CFR Part 212

Highways and roads, National forests, Rights-of-way, and Transportation.

Therefore, for the reasons set forth in the preamble, Part 212 of Title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 212—[AMENDED]

1. Revise the authority citation for Part 212 to read as follows:

Authority: 16 U.S.C. 551, 23 U.S.C. 205.

2. Revise § 212.2 to read as follows:

§ 212.2 Forest development transportation program.

(a) A forest development transportation plan must be prepared for each National Forest and experimental forest and other areas under Forest Service administration. The plan must be prepared, maintained, revised, and reported on in accordance with procedures prescribed by the Chief.

(b) A program of work for the forest development transportation system shall be developed each fiscal year in accordance with procedures prescribed by the Chief.

(c) Forest development transportation system funds shall be allocated based on consideration of relative needs of the various National Forests and other lands administered by the Forest Service, the existing transportation facilities, the value of timber or other resources served, relative fire danger, and comparative difficulties of construction.

§§ 212.7 and 212.9 [Amended]

3. In §§ 212.7(c) and 212.9(d), remove the reference to "§ 212.11" and, in its place, add a reference to "§ 212.9".

§ 212.10 [Amended]

4. In § 212.10(a)(2), make the following changes:

a. Remove the reference to "§ 212.9 (b) and (c)" and, in its place, add a reference to "§ 212.7 (b) and (c)".

b. Remove the reference to "§ 212.7(c)" and, in its place, add the reference to "§ 212.5(c)".

c. Remove the reference to "§ 212.11" and, in its place, add a reference to "§ 212.9".

§ 212.11 [Amended]

5. In section 212.11(f), remove the reference to "§ 212.7(d)" and, in its place, add the reference to "§ 212.5(d)".

§§ 212.3 and 212.4 [Removed]

§§ 212.5 through 212.12 [Redesignated]

6. Remove §§ 212.3 and 212.4 and redesignate §§ 212.5 through 212.12 as §§ 212.3 through 212.10 respectively.

§§ 212.11 and 212.12 [Reserved]

7. Reserve §§ 212.11 and 212.12.

Dated: October 21, 1997.

Ronald E. Stewart,

Acting Associate Chief.

[FR Doc. 97–28812 Filed 10–29–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI90

Veterans Education: Increase in Rates Payable Under the Montgomery GI Bill—Active Duty

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: By statute, the monthly rates of basic educational assistance payable to veterans and servicemembers under the Montgomery GI Bill—Active Duty must be adjusted each fiscal year. In accordance with the statutory formula, the regulations governing rates of basic educational assistance payable under the Montgomery GI Bill—Active Duty for fiscal year 1998 (October 1, 1997, through September 30, 1998) are changed to show a 2.8% increase in these rates.

DATES: This final rule is effective October 30, 1997. However, the changes in rates are applied retroactively to conform to statutory requirements. For more information concerning the dates of application, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration (202) 273–7187.

SUPPLEMENTARY INFORMATION: Under the formula mandated by 38 U.S.C. 3015(g) for fiscal year 1998, the rates of basic educational assistance under the Montgomery GI Bill—Active Duty payable to students pursuing a program of education full time must be increased by the percentage that the total of the monthly Consumer Price Index-W for July 1, 1996, through June 30, 1997, exceeds the total of the monthly Consumer Price Index-W for July 1, 1995, through June 30, 1996. This is 2.8%.

It should be noted that some veterans will receive an increase in monthly payments that will be less than 2.8%. The increase does not apply to additional amounts payable by the Secretary of Defense to individuals with skills or a specialty in which there is a critical shortage of personnel (so-called "kickers"). It does not apply to amounts payable for dependents. Veterans who previously had eligibility under the Vietnam Era GI Bill receive monthly payments that are in part based upon basic educational assistance and in part based upon the rates payable under the Vietnam Era GI Bill. Only that portion attributable to basic educational assistance is increased by 2.8%.

Although 38 U.S.C. 3015(g) requires only that the full-time rates be increased, these revisions include increases for other training also. Monthly rates payable to veterans in apprenticeship or other on-job training are set by statute at a given percentage of the full-time rate. Hence, any rise in the full-time rate automatically requires an increase in the rates for such training.

38 U.S.C. 3015 (a) and (b) require that the Department of Veterans Affairs (VA) pay part-time students at appropriately reduced rates. Since the first student became eligible for assistance under the Montgomery GI Bill—Active Duty in 1985, VA has paid three-quarter-time students and one-half-time students at 75% and 50% of the full-time rate, respectively. Students pursuing a program of education at less than one-half but more than one-quarter-time have had their payments limited to 50% or less of the full-time rate. Similarly, students pursuing a program of education at one-quarter-time or less have had their payments limited to 25% or less of the full-time rate. Changes are made consistent with the authority and formula described in this paragraph.

Nonsubstantive changes also are made for the purpose of clarity.

The changes set forth in this final rule are effective from the date of publication, but the changes in rates are applied retroactively from October 1,

1997, in accordance with the applicable statutory provisions discussed above.

Substantive changes made by this final rule merely reflect statutory requirements and adjustments made based on previously established formulas. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Acting Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612 and does not directly affect small entities. This final rule directly affects only individuals. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance number for the program affected by this final rule is 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, Health programs, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 17, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out above, 38 CFR part 21, subpart K, is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

1. The authority citation for part 21, subpart K, continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

2. In § 21.7136, paragraphs (b), (c)(1), (c)(2), and (c)(3) are revised, to read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

* * * * *

(b) *Rates.* (1) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable for training that occurs after September 30, 1997, and before October 1, 1998, to a veteran whose service is described in paragraph (a) of this section is the rate stated in the following table:

Training	Monthly rate
Full time	$439.85
¾ time	329.89
½ time	219.93
Less than ½ but more than ¼ time	219.93
¼ time or less	109.96

(Authority: 38 U.S.C. 3015)

(2) If a veteran's service is described in paragraph (a) of this section, the monthly rate payable to the veteran for pursuit of apprenticeship or other on-job training that occurs after September 30, 1997, and before October 1, 1998, is the rate stated in the following table:

Training period	Monthly rate
First six months of pursuit of training	$329.89
Second six months of pursuit of training	241.92
Remaining pursuit of training	153.95

(Authority: 38 U.S.C. 3015, 3032(c))

(3) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of a cooperative course is:

(i) $427.87 for training that occurs after October 8, 1996, and before October 1, 1997; and

(ii) $439.85 for training that occurs on or after October 1, 1997.

(Authority: 38 U.S.C. 3015)

(c) * * *

(1) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran for training that occurs after September 30, 1997, and before October 1, 1998, is the rate stated in the following table:

Training	Monthly rate
Full time	$357.38
¾ time	268.04
½ time	178.69
Less than ½ but more than ¼ time	178.69
¼ time or less	89.35

(Authority: 38 U.S.C. 3015, 3032(c))

(2) The monthly rate of educational assistance payable to a veteran for pursuit of apprenticeship or other on-job training that occurs after September 30, 1997, and before October 1, 1998, is the rate stated in the following table:

Training period	Monthly rate
First six months of pursuit of training	$268.04
Second six months of pursuit of training	196.56
Remaining pursuit of training	125.08

(Authority: 38 U.S.C. 3015, 3032(c))

(3) The monthly rate of basic educational assistance payable to a veteran for pursuit of a cooperative course is:

(i) $347.65 for training that occurs after October 8, 1996, and before October 1, 1997; and

(ii) $357.38 for training that occurs on or after October 1, 1997.

(Authority: 38 U.S.C. 3015)

* * * * *

3. In § 21.7137, paragraph (c)(2) introductory text is amended by removing "1996, and before October 1, 1997" and adding, in its place, "1997, and before October 1, 1998"; paragraph (c)(2)(i) is amended by removing "$615.87" and adding, in its place, "$627.85"; paragraph (c)(2)(ii) is amended by removing "$462.40" and adding, in its place, "$471.39"; paragraph (c)(2)(iii) is amended by removing "$309.94" and adding, in its place, "$313.93"; paragraph (c)(2)(iv) is amended by removing "$153.97" and adding, in its place, "$156.96"; and paragraph (a) is revised to read as follows:

§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. ch. 34.

(a) *Minimum rates.* (1) Except as elsewhere provided in this section, the monthly rate of basic educational assistance for training that occurs after September 30, 1997, and before October 1, 1998, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$627.85	$663.85	$694.85	$16.00
¾ time	471.39	497.89	521.39	12.00
½ time	313.93	331.93	347.43	8.50
Less than ½ but more than ¼ time	313.93	313.93	313.93	0.00
¼ time or less	156.96	156.96	156.96	0.00

(Authority: 38 U.S.C. 3015(e), (f), and (g))

(2) For veterans pursuing apprenticeship or other on-job training, the monthly rate of basic educational assistance for training that occurs after September 30, 1997, and before October 1, 1998, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	$432.64	$445.01	$455.89	$5.25
2nd six months of pursuit of program	298.29	307.64	315.34	3.85
3rd six months of pursuit of program	177.75	183.87	188.60	2.45
Remaining pursuit of program	165.85	171.62	176.87	2.45

(Authority: 38 U.S.C. 3015(e), (f), (g))

(3) The monthly rate payable to a veteran who is pursuing a cooperative course is the rate stated in the following table:

Training period	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Oct. 9, 1996–Sept. 30, 1997	$579.87	$605.37	$629.87	$11.50
On or after Oct. 1, 1997	591.85	617.35	641.85	11.50

(Authority: 38 U.S.C. 3015)

* * * * *

[FR Doc. 97–28723 Filed 10–29–97; 8:45 am]
BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 95–177; FCC 97–379]

Biomedical Telemetry Transmitters

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Report and Order*, the Commission amends its regulations regarding the unlicensed operation of biomedical telemetry transmitters in the 174–216 MHz (TV channels 7–13) and 470–668 MHz (TV channels 14–46) bands, as proposed in the *Notice of Proposed Rule Making* ("*Notice*") in this proceeding, 61 FR 3367, January 31, 1996. These amendments will provide patients in health care facilities the ability to move about in a limited area while being continually monitored, speeding patient recovery times, shortening lengths of stay, and reducing health care costs. The standards being adopted for these devices should protect the licensed services operating in the TV bands. Further, a coordination procedure has been implemented to protect radio astronomy observatories from potential interference from biomedical telemetry systems operating on 608–614 MHz (TV channel 37).

DATES: Effective December 1, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Engineering and Technology, (202) 418–2455.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in ET Docket No. 95–177, FCC 97–379, adopted October 9, 1997, and released October 20, 1997. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036.

Summary of the Report and Order

1. In the *Report and Order* ("*Order*"), the Commission amended Part 15 of its regulations to permit unlicensed biomedical telemetry transmission

systems operating on TV channels 7–46 in the 174–216 MHz and 470–668 MHz frequency bands to be used in health care facilities. Biomedical telemetry transmitters are used in hospitals to transmit patient measurement data to a nearby receiver, permitting patient mobility and improved comfort. Typical devices include heart, blood pressure and respiration monitors.

2. While the Commission proposed in the *Notice* to permit the operation of biomedical telemetry devices over TV channels 7–69, it noted that it was now proposing to reallocate TV channels 52–69 to other services. Further, it is undecided at this time whether the Commission will reallocate TV channels 2–6 or 47–51. Thus, the Commission amended its rules to permit unlicensed biomedical telemetry devices only on TV channels 7–46. The Commission believes that these products can share the spectrum with licensed services. Biomedical telemetry devices are expensive, complex products that are generally installed by the manufacturer or by a third party working with the manufacturer. In most cases, individual systems must be specifically engineered for each location. Further, biomedical telemetry devices are sensitive to interference. Because interference to these products could endanger the health and safety of patients using this equipment, it is expected that health care facilities, in combination with the manufacturers and installers, would expend considerable effort to avoid operating on occupied broadcast channels. Operators of unlicensed biomedical telemetry devices are reminded that they must accept whatever level of interference is received from other radio operations and are responsible for resolving any interference problems caused by the operation of their equipment, even if resolving that interference requires that the biomedical telemetry device cease operations.

3. Protection from potential harmful interference from biomedical telemetry devices must be provided to all authorized operations within the TV bands, including TV broadcast stations operating under Part 73 of the rules, Low Power TV, TV Translator and TV Booster Stations operation under Subpart G of Part 74 of the rules, Low Power Auxiliary Stations operating under Subpart H of Part 74 of the rules, and Private Land Mobile Radio Services operating under Part 90 of the rules. The minimum separation distances employed to avoid inference need to be established based on the protection criteria for the individual radio services. The interference analysis should not generally rely on assumptions about the attenuation of intervening walls and other objects since biomedical telemetry devices are designed to be used on ambulatory patients who could be near windows or immediately outside of the hospital walls, such as on an attached patio. Also, the interference analyses should not rely on assumptions about body shielding as manufacturers often request that measurement of body-worn transmitters be made while the transmitter is worn on a person. Based on these criteria, the Commission recalculated minimum co-channel separation distances that must be observed by the operators and installers of biomedical telemetry transmitters, as shown in the attached regulations. Parties wishing to operate biomedical telemetry transmitters on TV channel 37 should note that they first must obtain written concurrence from the director of the affected radio astronomy observatory if they are located closer than the specified minimum distance. The Commission declined to establish separation distances for adjacent channel operations, noting that the limits on unwanted emissions should prevent this type of interference problem.

4. In the *Order*, the Commission established a maximum field strength limit of 200 mV/m, as measured at a distance of three meters. Further, the fundamental signal may not be wider than the 6 MHz bandwidth of a single TV channel, and the signal must be contained within a single TV channel. Emissions outside of the TV channel within which the fundamental emission from the biomedical telemetry transmitter is located must be attenuated to the general emission limits in 47 CFR § 15.209.

5. Accordingly, It is ordered that Part 15 of the Commission's Rules and Regulations is amended. This action is taken pursuant to Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

Final Regulatory Flexibility Analysis

6. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rule Making* ("*Notice*") in ET Docket No. 95–177.[1] The Commission sought written public comments on the proposals in the *Notice* including the IRFA. The Commission's Regulatory Flexibility Analysis (FRFA) in this Report and Order conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996).

7. *Need for and Objective of the Rule.* In this *Order*, the Commission amends Part 15 of its rules to expand the availability of frequencies and to increase the permitted power for unlicensed biomedical telemetry devices operating on VHF and UHF television channels 7–46 within health care facilities. These devices will provide patients the freedom to move about in a limited area while being continually monitored, speeding patient recovery times, shortening lengths of stay, and reducing health care costs. The changes to the regulations support spectrum efficiency by facilitating the sharing of scarce radio spectrum between two services and providing cost-efficient and needed medical technologies to health care communities.

8. *Summary of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis.* No comments were received in direct response to the Initial Regulatory Flexibility Analysis. However, commenters expressed considerable concern regarding the potential impact of biomedical telemetry devices sharing spectrum with the TV broadcast frequencies, especially in light of the forthcoming introduction of DTV. Many of the commenters requested that dedicated spectrum, outside of the TV bands, should be set aside for biomedical telemetry devices. For example, the Society of Broadcast Engineers (SBE) states that potentially life-critical biomedical telemetry has no place as a "bottom-of-the-food-chain" Part 15 device; if CCTG needs more spectrum, it should explore bands where such use can occur on a licensed, and therefore protected, basis. The Public Broadcasting Service and the Association of America's Public Television Stations (PBS/APTS) add that it would be a mistake for the Commission to establish a new system in the TV broadcasting spectrum where substantial changes are planned. The Community Broadcasters Association (CBA) states that TV spectrum is a poor environment into which to launch more intensive and higher powered use of critical medical devices on which health and lives will depend. Even CCTG states that the Commission should consider dedicating spectrum to the exclusive use of medical telemetry after the DTV

[1] Amendment of Part 15 of the Commission's Rules to permit operation of biomedical telemetry devices on VHF TV channels 7–13 and on UHF TV channels, 11 FCC Rcd 1063 (1996).

transition. Other commenters, such as the Leesburg Regional Medical Center and Texas Children's Hospital, are concerned that interference will be caused to biomedical devices from TV signals rather than interference from biomedical devices to TV signals.

9. The Critical Care Telemetry Group that petitioned the Commission to implement these rule changes and filed comments in this proceeding consists of Hewlett-Packard Company Medical Products Group, Marquette Electronics, Inc., Pacific Communications, Siemens Medical Systems, Inc., and SpaceLabs Medical, Inc.

10. *Description and Estimate of the Number of Small Entities Subject to Which the Rules Apply.* For purposes of the Report and Order, the RFA generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[2] Under the Small Business Act, a small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses that would be affected by this action. The rules adopted in this Report and Order apply to the operation of unlicensed biomedical telemetry transmitter devices for medical care facilities. These devices are used to transmit data, including heart, blood pressure and respiration monitors, to a nearby receiver.

11. The Commission has not developed a definition of small entities applicable to biomedical telemetry transmitter devices. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services "Not Elsewhere Classified." This definition provides that a small entity is one with $11.0 million or less in annual receipts.[3] According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those approximately 775 reported annual receipts of $11 million or less and qualify as small entities.[4] This category is very broad, and we are unable to determine how many operators of unlicensed biomedical telemetry devices will qualify as small entities.

12. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* The rule change will not alter current reporting, recordkeeping or other requirements. To receive equipment authorization to operate on the television channels, applicants would have to demonstrate that their biomedical telemetry devices comply with the equipment standards and obtain an authorization from the Commission.

13. *Significant Alternatives and Steps Taken by Agency to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.* While the *Notice* proposed to permit biomedical telemetry operation over the frequency ranges of 174–216 MHz and 470–806 MHz (TV channels 7–69), we no longer believe that this entire frequency range can be made available. In the DTV *Sixth Report and Order* in MM Docket No. 87–268 the Commission indicated that it plans to reallocate TV channels 52–69 (698 MHz to 806 MHz) to other services and will reallocate either TV channels 2–6 (54–88 MHz) or 47–51 (668–698 MHz).[5] Thus, this spectrum no longer appears suitable for assignment to unlicensed biomedical telemetry operation. Accordingly, we are amending the rules to permit the operation of biomedical telemetry devices only over the frequency bands of 174–216 MHz and 470–668 MHz (TV channels 7–46).

14. *Report to Congress.* The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Report and Order,* in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A).

[2] *See* 5 U.S.C. § 601(3).

[3] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899.

[4] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 2D, Employment Size of Firms: 1992, SIC Code 4899 (issued May 1995).

[5] See the *Sixth Report and Order* in MM Docket No. 87–268, 62 FR 26684, May 14, 1997. See also the *Notice of Proposed Rule Making* in ET Docket No. 97–157, 62 FR 41012, July 31, 1997, proposing to reallocate TV channels 60–69 for public safety use and for other services. In addition, see Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997), requiring the Commission to reallocate TV channels 52–69 for other services.

List of Subjects

47 CFR Part 15

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, Part 15, is amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: Secs. 4, 302, 303, 304, 307 and 624A of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, 307 and 544A.

2. Section 15.205 is amended by adding a new paragraph (d)(5), to read as follows:

§ 15.205 Restricted bands of operation.

* * * * *

(d) * * *

(5) Biomedical telemetry devices operating under the provisions of § 15.242 of this part are not subject to the restricted band 608–614 MHz but are subject to compliance within the other restricted bands.

* * * * *

3. Section 15.209 is amended by revising paragraph (g) to read as follows:

§ 15.209 Radiated emission limits; general requirements.

* * * * *

(g) Perimeter protection systems may operate in the 54–72 MHz and 76–88 MHz bands under the provisions of this section. The use of such perimeter protection systems is limited to industrial, business and commercial applications.

4. A new § 15.242 is added to read as follows:

§ 15.242 Operation in the bands 174–216 MHz and 470–668 MHz.

(a) The marketing and operation of intentional radiators under the provisions of this section is restricted to biomedical telemetry devices employed solely on the premises of health care facilities.

(1) A health care facility includes hospitals and other establishments that offer services, facilities, and beds for use beyond 24 hours in rendering medical treatment and institutions and organizations regularly engaged in providing medical services through

clinics, public health facilities, and similar establishments, including governmental entities and agencies for their own medical activities.

(2) This authority to operate does not extend to mobile vehicles, such as ambulances, even if those vehicles are associated with a health care facility.

(b) The fundamental emissions from a biomedical telemetry device operating under the provisions of this section shall be contained within a single television broadcast channel, as defined in part 73 of this chapter, under all conditions of operation and shall lie wholly within the frequency ranges of 174–216 MHz and 470–668 MHz.

(c) The field strength of the fundamental emissions shall not exceed 200 mV/m, as measured at a distance of 3 meters using a quasi-peak detector. Manufacturers should note that a quasi-peak detector function indicates field strength per 120 kHz of bandwidth ±20 kHz. Accordingly, the total signal level over the band of operation may be higher than 200 mV/m. The field strength of emissions radiated on any frequency outside of the television broadcast channel within which the fundamental is contained shall not exceed the general limits in § 15.209.

(d) The user and the installer of a biomedical telemetry device operating within the frequency range 174–216 MHz, 470–608 MHz or 614–668 MHz shall ensure that the following minimum separation distances are maintained between the biomedical telemetry device and the authorized radio services operating on the same frequencies:

(1) At least 10.3 km outside of the Grade B field strength contour (56 dBuV/m) of a TV broadcast station or an associated TV booster station operating within the band 174–216 MHz.

(2) At least 5.5 km outside of the Grade B field strength contour (64 dBuV/m) of a TV broadcast station or an associated TV booster station operating within the bands 470–608 MHz or 614–668 MHz.

(3) At least 5.1 km outside of the 68 dBuV/m field strength contour of a low power TV or a TV translator station operating within the band 174–216 MHz.

(4) At least 3.1 km outside of the 74 dBuV/m field strength contour of a low power TV or a TV translator station operating within the bands 470–608 MHz or 614–668 MHz.

(5) Whatever distance is necessary to protect other authorized users within these bands.

(e) The user and the installer of a biomedical telemetry device operating within the frequency range 608–614 MHz and that will be located within 32 km of the very long baseline array (VLBA) stations or within 80 km of any of the other radio astronomy observatories noted in footnote US 311 of Section 2.106 of this chapter must coordinate with, and obtain the written concurrence of, the director of the affected radio astronomy observatory before the equipment can be installed or operated. The National Science Foundation point of contact for coordination is: Spectrum Manager, Division of Astronomical Sciences, NSF Rm 1045, 4201 Wilson Blvd., Arlington, VA 22230; tel: (703) 306–1823.

(f) Biomedical telemetry devices must not cause harmful interference to licensed TV broadcast stations or to other authorized radio services, such as operations on the broadcast frequencies under subparts G and H of part 74 of this chapter, land mobile stations operating under part 90 of this chapter in the 470–512 MHz band, and radio astronomy operation in the 608–614 MHz band. (See § 15.5.) If harmful interference occurs, the interference must either be corrected or the device must immediately cease operation on the occupied frequency. Further, the operator of the biomedical telemetry device must accept whatever level of interference is received from other radio operations. The operator, *i.e.*, the health care facility, is responsible for resolving any interference that occurs subsequent to the installation of these devices.

(g) The manufacturers, installers, and users of biomedical telemetry devices are reminded that they must ensure that biomedical telemetry transmitters operating under the provisions of this section avoid operating in close proximity to authorized services using this spectrum. Sufficient separation distance, necessary to avoid causing or receiving harmful interference, must be maintained from co-channel operations. These parties are reminded that the frequencies of the authorized services are subject to change, especially during the implementation of the digital television services. The operating frequencies of the part 15 devices may need to be changed, as necessary and in accordance with the permissive change requirements of this chapter, to accommodate changes in the operating frequencies of the authorized services.

(h) The manufacturers, installers and users of biomedical telemetry devices are cautioned that the operation of this equipment could result in harmful interference to other nearby medical devices.

[FR Doc. 97–28761 Filed 10–29–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 96–128; FCC 97–371]

Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On October 9, 1997, the Commission adopted a *Second Report and Order* in CC Docket 96–128, FCC 97–371, in which it concluded that interexchange carriers must compensate payphone service providers for all coinless payphone calls not otherwise compensated pursuant to contract, including subscriber 800 and access code calls, 0+ and inmate calls, at the rate of $.284 per call. The Commission based this decision on the conclusion that the default rate for per-call compensation for these calls is the deregulated local coin rate adjusted for cost differences. This rate will continue to be the default rate for coinless payphone calls for the first two years of per-call compensation. After the first two years, the market-based local coin rate adjusted for certain costs is the surrogate for the default per-call rate.

EFFECTIVE DATE: October 30, 1997.

FOR FURTHER INFORMATION CONTACT: Rose Crellin or Greg Lipscomb, Formal Complaints and Information Branch, Enforcement Division, Common Carrier Bureau (202) 418–0960.

SUPPLEMENTARY INFORMATION:

Adopted: October 9, 1997.

Released: October 9, 1997.

By the Commission: Commissioners Quello and Ness issuing separate statements.

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(Note: In the FCC Record version of this order, Attachments are listed as Appendices, and their order is different from that stated above.)

I. Introduction

1. In this order, we address the default per-call compensation rate [1] for subscriber 800 and access code calls [2] originated from payphones in light of the decision of the United States Court of Appeals for the District of Columbia Circuit (the court) *in Illinois Public Telecommunications Ass'n* versus *FCC*, [3] which vacated and remanded portions of the *Payphone Orders*. [4] In that decision, the court concluded that the Commission did not justify adequately setting the per-call compensation rate for subscriber 800 and access code calls at the deregulated local coin rate of $0.35, [5] because it did not justify its conclusion that the costs of local coin calls are similar to those of subscriber 800 calls and access code calls. [6] After seeking additional comment on this issue, we conclude in this order that the default rate for per-call compensation of subscriber 800 and access code calls from payphones is the deregulated local coin rate adjusted for cost differences. As discussed herein, based on our analysis of the record and the statutory policy goals of Section 276 of the Communications Act, [7] we establish a rate of $0.284 per call as the default per-call compensation rate for subscriber 800 and access code calls for the first two years of per-call compensation. [8] This rate will continue to be the default rate for coinless payphones absent a negotiated rate. Interexchange carriers (IXCs) must pay this per-call amount to payphone service providers (PSPs) for access code and subscriber 800 calls beginning October 7, 1997, as required by the *Payphone Orders*. [9] After the first two years of per-call compensation, the market-based local coin rate adjusted for certain costs is the surrogate for the default per-call rate for subscriber 800 and access code calls. [10]

2. The compensation amount we adopt in this *Second Report and Order* is applicable, as Section 276(d) provides, to "[t]he provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services." [11] We previously have declined to treat 0+ and calls from inmate payphones differently from other payphone calls, [12] and we reaffirm that decision here. As of October 7, 1997, PSPs must be compensated for all payphone calls not otherwise compensated pursuant to contract, including 0+ and inmate calls.

3. The immediate implementation of the rule provisions adopted herein is crucial to the Commission's efforts to ensure fair compensation for PSPs, encourage the deployment of payphones, and enhance competition among payphone providers, as mandated by Section 276 of the Act. [13] The Commission's *Payphone Orders* require that per-call compensation for certain payphone calls begin by October 7, 1997. To meet this obligation, we must revise those rules vacated by the court in *Illinois Public Telecomm.* that relate to the implementation of a per-call compensation scheme and commence on October 7, 1997. *The Report and Order*, released September 20, 1996 (61 FR 52307 (October 7, 1996)), informed parties that per-call compensation would commence on October 7, 1997. [14] Therefore, parties affected by this rule change have had notice since the release of that order that they would be subject to certain obligations beginning October 7, 1997. Making this order effective immediately

[1] The default per-call rate is the rate that shall apply in the absence of a negotiated agreement between parties during the first two years of per-call compensation (October 7, 1997, through October 6, 1999). Thereafter, the default rate, in the absence of a negotiated agreement, is the market-based local coin rate less $0.066. For coinless payphones, $0.284 will continue to be the default rate, absent a negotiated agreement.

[2] An "access code" is a sequence of numbers that, when dialed, connect the caller to the operator service provider ("OSP") associated with that sequence, as opposed to the OSP presubscribed to the originating line. Access codes include 800 numbers, 10XXX in equal access areas and "950" Feature Group B dialing (950–0XXX or 950–1XXX) anywhere, where the three-digit XXX denotes a particular interexchange carrier. See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, 57 FR 21038 (May 18, 1992); 7 FCC Rcd 3251, 3251 n.1 (1992) ("OSP Second Report and Order"). "Subscriber 800 calls" consist of calls to an 800 number assigned to a particular subscriber. See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Notice of Proposed Rulemaking, 61 FR 31481 (June 20, 1996); 11 FCC Rcd 6716 (1996) ("NPRM"). In this order, subscriber 800 encompasses toll-free subscriber calls, including 888 numbers. See Toll Free Service Access Codes, 61 FR 7738 (February 29, 1996); 11 FCC Rcd 2496 (1996).

[3] 117 F.3d 555 (D.C. Cir. 1997) ("Illinois Public Telecomm.").

[4] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128, Report and Order, 61 FR 52307 (October 7, 1996), 11 FCC Rcd 20,541 (1996) ("Report and Order"); Order on Reconsideration, 61 FR 65341 (December 12, 1996), 11 FCC Rcd 21,233 (1996) ("Order on Reconsideration") (collectively the "Payphone Orders").

[5] Illinois Public Telecomm., 117 F.3d at 564.

[6] *Id.*

[7] 47 U.S.C. § 276 Communications Act of 1934, Section 276 was added by the Telecommunications Act of 1996 ("1996 Act").

[8] In the Payphone Orders, we established a two-part compensation scheme for subscriber 800 and access code calls, as well as for local coin calls, to facilitate the transition from a highly regulated industry to a deregulated one. As noted above, the court vacated the interim compensation plan regarding compensation for subscriber 800 and access code calls; the court, however, upheld the interim compensation plan for local coin calls. Phase one, or the first year of interim compensation for access code and subscriber 800 calls, required that IXCs with a certain annual toll revenue pay PSPs a flat-rate compensation of $45.85 per payphone per month in shares proportionate to their share of total market long distance revenues. During the second year of interim compensation (also, the first year of per-call compensation) we required the IXCs to pay the PSP for each completed subscriber 800 and access code call. See Report and Order, 61 FR 52307 (October 7, 1996); 11 FCC Rcd at 20,568 at para. 51. This order addresses specifically the first two years of per-call compensation, and as noted above, establishes a default rate for per-call compensation at $0.284. See infra paras. 117–22.

[9] The Payphone Orders state that LEC PSPs are entitled to be paid per-call compensation by IXCs for access code and subscriber 800 calls when they have complied with the requirements of the Payphone Orders and will certify to that effect. Order on Reconsideration, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,293–94, paras. 130–32. We note that the Commission did not establish a requirement that LEC PSPs obtain a formal certification of compliance from the Commission or the states to receive per-call compensation pursuant to the Payphone Orders.

[10] As determined in this order, the difference between the per-call rate for subscriber 800 and access code calls and the local coin rate is $0.066.

[11] 47 U.S.C. § 276(d).

[12] See Report and Order, 61 FR 52307 (October 7, 1996); 11 FCC Rcd at 20,579, para. 74; Order on Reconsideration, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,259, para. 52. A 0+ call occurs when the caller dials "0" plus the called telephone number. 0+ calls include credit card, collect, and third number billing calls. See OSP Second Report and Order, 7 FCC Rcd at 3251 n.4. 0–calls are calls in which the caller dials only the digit "0" and then waits for operator intervention. 0–transfer service is a service offered by LECs to OSPs under which LECs transfer a 0-call to the OSP requested by the calling party. See OSP Second Report and Order, 57 FR 21038 (May 18, 1992); 7 FCC Rcd at 3255 n.44.

[13] The normal period until effectiveness in a rulemaking is thirty days after publication of the changed rules in the **Federal Register**, but we accelerate that period here for good cause, pursuant to Section 553(d) of the Administrative Procedure Act. *See* 5 U.S.C. § 553(d).

[14] This requirement established in the *Report and Order* becomes effective October 7, 1997, one year after publication in the **Federal Register**, 61 FR 52,307 (1996).

minimizes disruption within the payphone industry by eliminating disputes about payment obligations and enhances the general availability of payphone services to the public.

4. This order does not address other issues vacated and remanded by the court or otherwise alter the requirements of the *Payphone Orders*. Other requirements remanded in *Illinois Public Telecomm.*, including the compensation obligations applicable during the period from November 1996, through October 6, 1997, will be addressed in a subsequent order in this proceeding. We tentatively conclude in this regard that the $0.284 per-call rate we are adopting as a default rate on a going forward basis should also govern compensation obligations during the period ending October 6, 1997. We also tentatively conclude that PSPs are entitled to compensation for all of their access code and subscriber 800 calls during this period. We plan to address the manner in which the total payment obligation for that period will be calculated and allocated among IXCs in a subsequent order.

5. We note that the Common Carrier Bureau (Bureau) has granted a limited waiver, until March 9, 1998, for those payphones that cannot provide payphone-specific digits as required by the *Payphone Orders*.[15] This limited waiver applies to the requirement that local exchange carriers (LECs) provide payphone-specific coding digits to PSPs, and that PSPs provide coding digits from their payphones before they can receive per-call compensation from IXCs for subscriber 800 and access code calls. This limited waiver was granted by the Bureau to afford LECs, IXCs, and PSPs an extended transition period for the provision of payphone-specific coding digits without further delaying the payment of per-call compensation as required by Section 276 of the Act and this order. The Bureau made this limited waiver effective immediately in order to ensure that PSPs receive per-call compensation beginning October 7, 1997.

II. Background

6. In the *Payphone Orders*,[16] the Commission adopted new rules and policies governing the payphone industry to implement Section 276 of the Act. Those rules and policies: (1) establish a plan to ensure fair compensation for "each and every completed intrastate and interstate call using [a] payphone[;]" [17] (2) discontinue intrastate and interstate carrier access charge service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange services; [18] (3) prescribe nonstructural safeguards for Bell Operating Company ("BOC") payphones; [19] (4) permit the BOCs to negotiate with payphone location providers on the interLATA carrier presubscribed to their payphones; [20] (5) permit all payphone service providers to negotiate with location providers on the intraLATA carriers that presubscribed to their payphones; [21] and (6) adopt guidelines for use by the states in establishing public interest payphones to be located "where there would otherwise not be a payphone[.]" [22]

7. In the *Report and Order*, the Commission noted that the 1996 Act erects a "procompetitive deregulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition." [23] Thus, we sought to advance the twin goals of Section 276 of the Act of "promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public * * *," [24] by eliminating the effects of some long-standing barriers to full competition in the payphone market. To effectuate this objective, we concluded that we would continue to regulate certain aspects of the payphone market, but only until such time as the market evolves to erase these sources of market distortions. [25]

8. Section 276(b)(1)(A) of the Act directs the Commission to establish a plan to ensure that all PSPs are fairly compensated for every completed call. [26] We defined "fair compensation" as the amount to which a willing seller (*i.e.* PSP) and a willing buyer (*i.e.* customer, or IXC) would agree for the completion of a payphone call. For certain calls, the PSP received no revenue for originating certain calls (*i.e.*, for subscriber 800 and other toll-free number calls) and could not block callers from making such calls (access code calls). Based on evidence in the record, we noted in the *Report and Order* that the number of these types of calls completed from payphones had proliferated in the past several years, [27] and we concluded that PSPs must be compensated for access code, subscriber 800, and other toll-free number calls, whether they are jurisdictionally intrastate or interstate. [28]

9. In the *Report and Order*, we concluded that the payphone marketplace has low entry and exit barriers and likely will become increasingly competitive, [29] and that the market generally is best able to set the appropriate price for payphone calls, including local coin calls, in the long term. [30] Therefore, because we have an obligation under Section 276 to ensure that the compensation for all local coin calls is fair, we concluded that the local market should be allowed to set the price for all compensable calls unless a state demonstrated that competition would not constrain prices; for example, payphones at certain locations would be priced at monopoly rates. This approach is appropriate, because once PSPs are free to enter the market, and once callers are free to choose payphones for their calls, the market ultimately will determine whether a particular payphone is economically viable. Therefore, in the *Payphone Orders*, we concluded that the appropriate per-call compensation amount, in the absence of a negotiated agreement, ultimately is the amount the particular payphone charges for a local coin call, because the market will determine the fair compensation

[15] *Order on Reconsideration*, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,278–79, paras. 93–95. *See Bureau Waiver Order*, DA 97–2162 (rel. Oct. 7, 1997).

[16] *Report and Order*, 61 FR 52307 (October 7, 1996); 11 FCC Rcd at 20,541; *Order on Reconsideration*, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,233.

[17] 47 U.S.C. § 276(b)(1)(A).

[18] 47 U.S.C. § 276(b)(1)(B).

[19] 47 U.S.C. § 276(b)(1)(C).

[20] 47 U.S.C. § 276(b)(1)(D).

[21] 47 U.S.C. § 276(b)(1)(E).

[22] 47 U.S.C. § 276(b)(2).

[23] S. Conf. Rep. No. 104–230, 104th Cong. 1 (1996).

[24] 47 U.S.C. § 276(b)(1).

[25] A number of parties subsequently filed petitions requesting that the Commission reconsider or clarify the rules the Commission adopted in the *Report and Order*. In the *Order on Reconsideration*, we substantially affirmed the rules adopted in the *Report and Order*. We denied all but two of the requested reconsiderations; those exceptions are not at issue here. In the *Order on Reconsideration*, the Commission modified: (1) the requirements for LEC tariffing of payphone services and unbundled network facilities; and (2) the requirements for LECs to remove unregulated payphone costs from the carrier common line charge and to reflect the application of multiline subscriber line charges to payphone lines. *See Order on Reconsideration*, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,234, para. 3.

[26] *See* 47 CFR § 276(b)(1)(A) (directing the Commission to establish a plan "to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone"). *See also Report and Order*, 61 FR 52307 (October 7, 1996); 11 FCC Rcd at 20,566, para. 48.

[27] *See Report and Order*, 61 FR 52307 (October 7, 1996); 11 FCC Rcd at 20,568, para. 52 n.187.

[28] *See id.* at 20,568, para. 52.

[29] *See id.* at 20,547, para. 11.

[30] *See id.* at 20,567, 20,577, paras. 49, 70.

rate for those calls. We further concluded that if a rate is compensatory for local coin calls, then it is an appropriate compensation amount for other calls as well, because we found the costs of originating various types of payphone calls such as access code and subscriber 800 calls to be similar to the costs incurred when initiating a local coin call.[31]

10. Before we moved to a local coin call default rate, however, we found that it was necessary to observe over time how the payphone marketplace would function in the absence of regulation. In particular, we concluded that consumers facing time constraints may not be able to find, in certain locations, a reasonable substitute for a payphone located on the premises. We stated that in these cases where the location provider has an exclusive contract with a PSP, the PSP may be able to charge supra-competitive prices. The location provider would share in the resulting "locational rents" through commissions paid by PSPs. We concluded that to the extent that market forces cannot ensure competitive prices at such locations, we may want to continue regulating, along with the states, the provision of payphone services generally or in particular types of locations where the size of the location or the caller's lack of time to identify potential substitute payphones could lead to locational monopolies. To allow us to ascertain the status of competition in the payphone marketplace, we concluded that we should establish the default per-call rate before leaving it to the market to set the rate, absent any changes in our rules.

11. We recognized that competitive conditions, which are a prerequisite to a deregulatory market-based approach, did not exist yet, and would not be achieved instantaneously. Therefore, we established an interim compensation plan to ease the transition to market-based local coin rates and ensure fair compensation for coin and noncoin calls. In particular, we established a two phase interim plan to address coin calls. During the first year (phase) the states would be responsible for ensuring that PSPs were fairly compensated for local coin calls as well as for protecting consumers from excessive rates. We concluded that states could continue to set the local coin rate during the year prior to market-based per-call compensation. During the second phase, beginning October 7, 1997, we stated that the market would set the price for the local coin call, absent particular state concerns, and the need for modification.[32]

12. Additionally, in the *Payphone Orders*, the Commission established a two-year interim plan for payphone compensation for subscriber 800 and access code calls based on a rate of $0.35 per call that began November 7, 1996. For the first year after the effective date of the rules adopted in this proceeding, we required that IXCs pay flat-rate compensation to PSPs. More specifically, under the first year of the interim plan, IXCs with annual toll revenues in excess of $100 million were required to pay, collectively, a flat-rate compensation of $45.85 per payphone per month in shares proportionate to their share of total market long distance revenues. During the second year of the interim plan, which is the first year of per-call compensation, all IXCs were required to pay $0.35 per subscriber 800 call or access code call unless they contracted with the PSP to pay a different amount.[33]

13. Numerous parties filed petitions in federal court seeking review of the *Payphone Orders*. In *Illinois Public Telecomm*, the court affirmed important parts of the Commission's rules implementing Section 276, but also vacated and remanded certain other aspects of those rules. The court overturned our determination in the *Payphone Orders* regarding: (1) the interim and permanent compensation rates established for access code and subscriber 800 calls; (2) the requirement that only those IXCs with annual toll revenues over $100 million pay PSPs for these calls during the first year of the interim period; (3) the failure to provide any interim compensation to BOC PSPs for "0+" calls and calls made from inmate payphones; and (4) the use of fair market value for payphone assets transferred from a BOC to a separate affiliate.[34]

14. By Public Notice released August 5, 1997, we sought comment on the issues remanded by the court.[35] We sought comment on the differences in costs to the PSP of originating subscriber 800 and access code calls as compared to local coin calls.[36] We sought comment on whether these potential differences in costs should affect a market based compensation amount, and if so, how.[37] We sought comment on whether the local coin rate—subject to an offset for expenses unique to those calls—is an appropriate per-call compensation rate for calls that are not compensated pursuant to a contract or other arrangement, such as subscriber 800 calls and access code calls.[38] We stated that parties should respond specifically to concerns raised by the court in setting forth their views on the appropriate per-call compensation amount.[39]

15. This order addresses only the amount of default per-call compensation. We decline to address in this order other issues related to the implementation of the per-call compensation structure.[40] Because the court vacated and remanded the per-call compensation rate for access code and subscriber 800 calls, we have sought to act expeditiously to reevaluate the default per-call rate. We conclude, because of the exigency of the situation wherein PSPs are not receiving per-call

[31] *Id.* at 20,577–78, para. 70; *Order on Reconsideration*, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,268–69, para. 71.

[32] *See Report and Order*, 61 FR 52307 (October 7, 1996); 11 FCC Rcd at 20,572, para. 60 (further stating that states are empowered to act where concerns exist about market failures, and that the Commission could address such market concerns if necessary).

[33] We noted that $0.35 was the local coin rate in four of the five states where the local coin rate had been deregulated and concluded that the market-based rate in those states was the best evidence of the per-call compensation amount for PSPs for the first two years of interim compensation. *See* Letter to William Caton, Acting Secretary, FCC from Michael Kellogg, Counsel, Coalition (Aug. 30, 1996) (noting that the local coin rate is $0.35 in four of the five states that have deregulated the local coin rate). The Coalition is comprised of the Bell Operating Companies ("BOCs")—Ameritech, the Bell Atlantic Telephone Companies, BellSouth Corporation, Pacific Bell, Nevada Bell, Southwestern Bell Telephone Company, and US West—together with GTE Service Corporation ("GTE") and Southern New England Telephone Company ("SNET"). *See also Report and Order*, 61 FR 52307 (October 7, 1996); 11 FCC Rcd at 20,578, para. 72. As we noted above, we believed the costs to originate access code and subscriber 800 calls were similar to those incurred when initiating a local coin call, and thus established a default rate based on the deregulated local coin rate. We note that of seven states that now have deregulated local coin rates, in five states (Michigan, Iowa, Nebraska, North Dakota and Wyoming) the rate is $0.35, and in two states (Montana and South Dakota) the rate is $0.25. *See Ex Parte Presentation* to FCC from Michael Kellogg, Counsel, Coalition (Sept. 26, 1997). In this order, the one year per-call compensation period subject to the $0.284 default rate is extended to two years.

[34] Illinois Public Telecomm., 117 F.3d at 558.

[35] *See* Pleading Cycle Established for Comment on Remand Issues in the Payphone Proceeding, CC Docket No. 96–128, 62 FR 43686 (August 15, 1997); DA 97–1673, rel. Aug. 5, 1997 (*Notice*). In the *Notice* we indicated that we placed the industry on notice that payphone compensation obligations, or the absence of such obligations, incurred by providers of interexchange services, and compensation levels paid or received under our existing rules pending action on remand, may be subject to retroactive adjustment. *Id.* at 1. With regard to the interim compensation plan, we specifically sought comment on compensation for subscriber 800, access code, and 0+ calls, and on retroactive adjustments to interim compensation levels and obligations. *See id.*

[36] *See id.* at 2.

[37] *Id.*

[38] *Id.*

[39] *Id.* at 3.

[40] *See infra* paras. 123–33.

compensation as required by Congress in Section 276, that we must address quickly and efficiently the most urgent issue—the per call compensation amount to be paid by IXCs to PSPs beginning on October 7, 1997, the beginning of per-call compensation.

III. Per-Call Compensation

A. The Standard for Determining Per-Call Compensation

16. In the *Notice*, we sought comment on whether the market-based local coin rate—subject to an offset for expenses unique to those calls—is an appropriate per-call compensation rate for calls that are not compensated pursuant to a contract or other arrangement, such as subscriber 800 and access code calls.[41] In *Illinois Public Telecomm.*, the court in particular concluded that the Commission did not adequately justify "tying the default rate [for per-call compensation] to local coin rates."[42] The court found evidence in the record that the costs of coin calls are higher than those for coinless calls because: (1) additional costs are incurred for equipment and coin collection; and (2) the PSP pays for originating and terminating local calls, while for coinless calls the PSP only pays for originating the calls.[43] Therefore, the court stated that setting the per-call compensation for subscriber 800 calls and access code calls at the deregulated local coin rate of $0.35 was not justified, and vacated and remanded the issue to the Commission for further consideration.[44]

1. *Comments*[45]

17. APCC asserts that *Illinois Public Telecomm.* affirms the Commission's market-based approach to determine compensation and does not mandate an analysis of costs.[46] According to APCC, the court also affirmed the Commission's finding that the payphone marketplace is competitive, even if market forces do not yet operate freely for dial-around calling.[47] APCC further argues that the court did not preclude the Commission from relying on market-based surrogates, such as the local coin rate, or require the Commission to calculate an exact cost differential to be reflected in the per-call compensation figure.[48] The Commission, APCC asserts, could exclude consideration of cost evidence altogether and focus solely on market price indicators.[49] APCC contends that the court objected only to the Commission's attempt to compare the costs of dial-around calls and local coin calls.[50] Only if the Commission continues to rely on cost comparisons as a factor in the application of a market-based approach, must the Commission adhere to the reasoning issues raised by the court, states APCC.[51] Parties further contend that a market-based approach will fulfill the requirements of the statute, *i.e.*, provide rates that "fairly compensate" PSPs and "promote competition among payphone service providers and the widespread deployment of payphone services."[52] APCC alleges that the IXCs do not provide any arguments for rejecting a market-based approach, and challenges the arguments that there are local payphone provider monopolies that prevent the payphone market from being competitive.[53] Peoples adds that PSPs are not monopoly providers because Commission rules require PSPs to unblock access code calls, giving every caller the option to dial around a PSP's presubscribed service provider or to use a debit card to reach a carrier of their choice.[54]

18. The Coalition argues that the court did not question the Commission's decision to rely on market-determined prices rather than regulatory accounting procedures.[55] The Coalition asserts that the court did not require the Commission to abandon its market-based proxies, but instead required the Commission to consider appropriate differences, such as originating costs, between coin and coinless calls.[56]

19. AT&T asserts that the court found that the Commission acted unlawfully in establishing an assumed market rate for coinless calls, because the Commission ignored record evidence on the cost differences between coin and coinless calls.[57] Because of this error, AT&T states, the court found that there was no rational basis for the Commission's conclusion that per-call compensation should be set at the assumed deregulated market price, and therefore, that the Commission's compensation rate could not stand.[58]

20. Frontier similarly argues that the court did not endorse the Commission's market-based approach,[59] and further, that the court found the Commission's conclusion that the local coin rate represents the best surrogate of the costs of completing local calls unjustified.[60]

21. Sprint asserts that although the Commission used a market-based approach to determine local coin rates, the Commission never purported to use a market-based approach for per-call compensation for access code and subscriber 800 calls.[61] Instead, Sprint contends that the Commission has viewed costs as the appropriate approach from the outset, and has sought surrogates for originating costs while rejecting non cost-based market surrogates.[62]

22. PageMart and CPI argue that the great disparity in the record between the market rates and costs demonstrates that the payphone market is not yet competitive,[63] because price in a truly competitive market would have been driven closer to cost.[64] PageNet argues that market rates are misleading, because, as consumers, IXCs cannot decline a sale, *i.e.*, block incoming payphone calls, and thus have a weakened market power.[65] WorldCom asserts that market-based rate would be more arbitrary and artificial than rates based on objective and verifiable costs.[66]

2. *Discussion*

23. Despite a careful review, we find no statement in the court's decision that precludes us from relying on market-based surrogates, or requires us to determine a rate based on cost data

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[41] *See Notice* at 2–3.

[42] *Illinois Public Telecomm.* 117 F. 3d at 564.

[43] *Id.* at 563–64.

[44] *See id.; Illinois Public Telecomm., Supplemental Opinion*, slip op. at 2.

[45] Abbreviations for parties are listed in Attachments B and C. The following section includes the analyses of the comments and reply comments submitted in this proceeding. Although for presentation the comments are summarized generally by subject area, we consider these comments and replies in reaching our decisions wherever the comment and reply comments are appropriate.

[46] *See* APCC Comments at 2–3; *see also* CCI Comments at 5.

[47] APCC Comments at 2–3.

[48] *Id.* at 3–4.

[49] *Id.*

[50] APCC Reply at 5.

[51] *Id.* at 6.

[52] APCC Comments at 2 (citing 47 U.S.C. §§ 276(b)(1), (1)(A)). See Coalition Reply at iv, 2, 5.

[53] APCC Reply at 7.

[54] Peoples Reply at 4.

[55] Coalition Reply at 6; Coalition Comments at 11–13.

[56] *Id.*

[57] AT&T Reply at 2; *see also* ACTA Comments at 3, CWI Comments at 11.

[58] AT&T Comments at 3–4.

[59] Frontier Reply at 3–4.

[60] *Id.* (stating that the "court plainly tied its assessment of what constitutes reasonable compensation to the costs of completing coinless calls").

[61] Sprint Reply at 14.

[62] *Id.* at 14–15.

[63] CPI Comments at 3 (arguing that a market-based rate is inappropriate because the payphone industry is not competitive, and because PSPs are monopolies or near monopolies).

[64] PageMart Reply at 7.

[65] *See* PageNet Comments at 9–11; PageNet Reply at 5, 7. *See* also Section D *infra* (discussing reconsideration of caller pays and the paging carriers arguments that only a calling party pays system would result in a true market rate); *see also* WorldCom Comments at 3–4 (arguing that the rates being proposed by the LECs and PSPs—between $0.42 and $0.63 per call—would not be accepted if the consumer paid them directly).

[66] WorldCom Reply at 3.

submitted by incumbent LECs, independent PSPs, and other parties to determine the new per-call rate. The court did not reject the concept of linking the market-based local coin rate to the per-call rate for access code and subscriber 800 calls based on the similarity in costs, nor conclude that our approach was irrational. Rather, the court concluded that the Commission had not responded to information on the record regarding the cost disparities between the cost of providing coin calls and subscriber 800 and access code calls. Therefore, the court concluded that adoption of the default rate without further explanation was arbitrary and capricious.[67]

24. The 1996 Act does not prescribe a particular course to ensure that all PSPs are fairly compensated for each and every call.[68] Nothing on the record in response to the *Notice* persuades us to change the deregulatory scheme established in the *Payphone Orders*. Based on the record in this proceeding, we affirm our decision in the *Payphone Orders* to use a market-based default rate for per-call compensation for subscriber 800 and access code calls. We conclude for the reasons stated there that a market-based rate best responds to the competitive marketplace for payphones consistent with the deregulatory scheme we adopted in the *Payphone Orders* for the provision of payphone services pursuant to Section 276, and also will effectively advance the statutory goals of encouraging competition and promoting the deployment of payphones.

25. As discussed above, because of market imperfections such as the inability of PSPs to block access code and subscriber 800 calls, we concluded in the *Payphone Orders* that a default rate was necessary to ensure that PSPs received fair compensation during the transition to a deregulated market. We also concluded in those orders, as we conclude here, that the default rate should be market-based. The method we use in this order to estimate a reasonable default per-call compensation rate addresses the court's concerns as well as those raised on the record in response to the *Notice* by LECs, IXCs, and PSPs. Specifically, our approach continues to rely on a market-based rate (the local coin rate).

26. We, however, adjust the market-based local coin rate for differences in the costs of coin and coinless operation, reducing the market-based local coin rate for coin-related costs and increasing the market-based local coin rate to reflect costs that are related to access code and subscriber 800 calls. In addition, in response to the arguments of parties in this proceeding that a market-based rate would be unreasonable and that we must establish a rate based on cost data submitted by the parties, we also have performed an analysis of those cost data to test the reasonableness of the selected per-call market-based rate. As discussed below, we find based on this analysis that the adjusted market-based rate is reasonable. Accordingly, we conclude that the deregulated local coin rate, adjusted for cost considerations, is a reasonable market-based surrogate for determining the default per-call compensation rate and specifically responds to the court's concerns that cost differences between coin calls and coinless access and subscriber 800 calls be explained. Furthermore, we conclude that the per-call rate established in this order will further the goals of Section 276 and is in the public interest.

27. The record on remand supports our prior conclusion that per-call compensation should be set by the marketplace and that full and unfettered competition is the best mechanism to achieve Congress' dual policy objectives.[69] Competition over time will lead to the more efficient placement of payphones, improved payphone service, and lower prices for consumers. To encourage competition in the payphone marketplace, we ensure in this *Second Report and Order* that PSPs are fairly compensated for "each and every completed intrastate and interstate call."

28. We conclude that because we make the per-call amount subject to negotiations, the marketplace will make the appropriate adjustments in the per-call rate. We established the per-call default rate to be applied only if the PSP and the IXC are unable to negotiate some other rate of compensation for compensable calls. Negotiations may lead to rates other than the default rate for several reasons. First, because virtually all of the costs are fixed costs and are not incurred on a per-call basis, an IXC and a PSP might agree to a flat-rated charge rather than a usage-based compensation rate. Second, there may be locations where a payphone would not be viable financially if compensated at only the default rate per compensable call, but would be viable at a higher compensation rate. If an IXC found it profitable to carry calls at this higher rate, it would be in the mutual interest of the two parties to agree on a higher rate. Third, IXCs may choose to pass on the per-call compensation rate to their customers. In the case of 800 subscriber calls, the IXC could pass on the cost to the called party. If the called party refused to accept calls for which it was charged the default rate, but was willing to accept calls with a lower charge, the IXC and the PSP may find it in their mutual interest to negotiate a per-call rate lower than the default rate. Fourth, in locations where a competing payphone could be placed without the permission of the location provider, a PSP may be willing to negotiate a lower rate than the default rate, rather than give an IXC the incentive to place a competing payphone.

B. Market-Based Compensation Analysis

29. As discussed above, we conclude that the appropriate rate of per-call compensation for access code and subscriber 800 calls is the market-based local coin rate adjusted for costs. In setting the per-call compensation rate for the first two years of per-call compensation, we begin with the $0.35 market-based local coin rate established in the *Payphone Orders* and adjust that rate to remove coin-related costs and add costs specific to subscriber 800 and access code calls.

1. *Comments*

30. *Market Rate.* APCC, the Coalition, Peoples, and CCI request that the Commission adopt a market-based per-call compensation rate, and furthermore, assert that the underlying costs attributable to both coin and noncoin calls are similar.[70] APCC contends that any market-based rate-setting mistakes are self-corrective, because the market will demonstrate the mistake.[71] APCC further contends that contrary to the IXCs position, the market will prevent PSPs from gaining any long term windfall, and would force any such "windfall," to be passed on to consumers.[72] APCC contends that market-based rates are more objective than the subjective components of cost-based rates.[73]

31. The Coalition further maintains that the market will reflect variations from region to region and payphone to

[67] *See* supra para. 13.

[68] 47 U.S.C. § 276(b)(1).

[69] 47 U.S.C. § 276(b)(1).

[70] *See* APCC Comments at 4; APCC Reply at 10 (stating that the Commission adopted a market-based approach in the *Payphone Orders*, and that the Commission should apply that approach in the instant proceeding); Peoples Comments at 8 (stating that the cost of a dial around call is similar to the deregulated market rate). *See* also Coalition Reply at 2–3 (stating that once the cost analyses provided by the IXCs are corrected for costs that should be included, the cost of a call reaches, and in some cases exceeds, the market rate).

[71] APCC Comments at 5.

[72] APCC Reply at 14.

[73] APCC Comments at 6.

payphone.[74] The Coalition urges that the market rate be the local coin rate adjusted to reflect the relative elasticities of demand of the various types of calls.[75] The Coalition contends that under market conditions sellers will tend to load costs onto services for which prices are less likely to fluctuate, *i.e.*, that have a lower elasticity of demand, than onto services that have a higher price sensitivity. The Coalition further argues that the elasticity of demand for local coin calls is higher than for long distance calls. In other words, the Coalition argues, customers of local calls will respond more quickly to price changes than customers of 0+, subscriber 800 and dial-around calls.[76] Thus, the Coalition contends, the price of long distance calls should be the local call rate adjusted upward to reflect the lower elasticity of demand and the greater proportion of costs, relative to local calls, that such calls will carry under true market conditions.[77]

32. CCI, an independent payphone provider, argues that the Commission should adopt a market-based surrogate, and contends that there are few differences between the costs of a local coin call and a subscriber 800 or access code call.[78] CCI argues, however, that even under a cost-based approach, the cost of a local coin call and a dial around call is approximately $0.35.[79]

33. Several of the IXCs assert that the retail price for local coin calls is not an appropriate surrogate for the costs of a noncoin call, because there are substantial cost differences between these two types of calls.[80] AT&T and MCI assert that if the Commission develops a rate based on an offset from the local coin rate, the offset should be at least fifty percent,[81] or based on the rate negotiated between AT&T and APCC in 1994 for dial-around access code calls.[82] MCI asserts that a market-based rate, being higher than a cost-based rate, would lead to increased blocking by 800 subscribers, as those subscribers try to avoid having to pay IXCs for unduly high payphone charges.[83] MCI also asserts that market-based rates are artificially driven up by location owners holding out for the highest bidding PSP.[84] These higher, market-based rates will lead to an unwarranted income transfer from consumers to payphone providers, MCI contends, because excessively high rates will encourage PSPs to place payphones in increasingly marginal locations.[85] The Coalition disputes MCI's assertion that a market-based rate would lead to increased blocking arguing that PSPs have an interest in seeing calls completed, which call blocking would defeat, and an acceptable market rate would result in more completed calls.[86]

34. *Local Coin Rate as Surrogate.* Several of the PSPs argue that if the local coin calling rate is used, no significant adjustment for cost differences between the coin rate and dial-around calls is required, because any cost differences are minimal.[87]

35. Peoples argues that a single, flat default rate would simplify procedures, much as a first-class postage stamp covers mail that goes various distances.[88] Peoples further argues that the local coin rate is such a flat rate, because it is used to originate all types of calls from a payphone.[89] Moreover, Peoples argues, coinless calls alone do not justify installing a payphone; payphones are installed for coin calls, thus, the local coin rate is a good market measure for all of the calls that originate from it.[90]

36. Several of the IXCs oppose the use of the local coin rate as a surrogate, but state that if the Commission uses the local coin rate, then the Commission should reduce the local coin rate so that it reflect only expenses unique to access code and subscriber 800 calls.[91] CPI objects to the use of the local coin rate as a starting point because the coin rate does not represent the result of a competitive market.[92] TRA says that using the local coin rate will lead to a grossly inflated default rate.[93] Frontier states that the coin rate bears little relationship to the costs of completing a coin call, much less a coinless call.[94]

37. *Other Surrogates.* APCC requests that the Commission consider other surrogates for the market rate, such as 0+ commissions, 0− transfer rates and sent-paid toll call surcharges.[95] According to APCC, the 0+ call commissions are the only known instance where carriers and PSPs meet in the marketplace to negotiate a price for routing a call from the payphone to the carrier, and therefore, the Commission should reconsider 0+ commissions.[96] APCC further contends that sent-paid tolls are another reasonable indicator of the market price.[97] Additionally, APCC contends that the 0− transfer rates are a reasonable surrogate, because these rates indicate the minimum price IXCs are willing to pay to obtain telephone traffic.[98] APCC concludes that the most appropriate market-based surrogates are local coin calls, operator-assisted call commissions and sent-paid toll surcharges, because these three surrogates are based on prices actually charged in the marketplace for origination of payphone calls. APCC states that a weighted average price for these three charges is $0.45 per call.[99]

38. Several of the IXCs argue that 0+ commissions cannot be used as a market guide because these commissions include factors unrelated to the use of payphones for the use of access code and subscribers 800 calls.[100]

[74] Coalition Reply at 6 (citing *Order on Reconsideration*, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,268–69, para. 71).

[75] Coalition Comments at 22.

[76] *Id.* at 23.

[77] *Id.* at 12–14; Coalition Reply at 4, 14–15.

[78] CCI Comments at 2.

[79] *See id.*

[80] *See, e.g.*, AT&T Comments at 4, 6; AT&T Reply at 4 (stating that market-based compensation is unrelated to and in excess of costs to originate coinless calls); Excel Reply at 1; MIDCOM Comments at 4–6 (stating that any alleged market rate would be distorted by the binding contracts to which the majority of payphone locations already are subject).

[81] *See* AT&T Comments at 13; MCI Reply at 3.

[82] *See* AT&T Reply at 12–13 (explaining that since AT&T negotiated the 25 cent rate, the average price of a dial around call has declined).

[83] MCI Comments at 4.

[84] MCI Reply at 10.

[85] *Id.*

[86] Coalition Reply at 8–9.

[87] *See* APCC Comments at 11–15 (arguing that fixed payphone costs do not change with the presence of dial-around calls, and further that there are no major differences in the variable costs); *see also* TEI Comments at 2; CCI Comments at 6–8 (arguing that the deregulated coin rate of $.35 per call is an appropriate surrogate).

[88] Peoples Comments at 7.

[89] *Id.*

[90] *Id.* at 6–7.

[91] CWI Comments at 9 n.7; CompTel Comments at 14 n.7; LCI Comments at 8; RCN Reply at 1.

[92] CPI Comments at 7.

[93] TRA Comments at 20.

[94] Frontier Reply at 5.

[95] APCC Comments at 8–10.

[96] *Id.* at 7–8 (arguing that the Commission erroneously rejected 0+ commissions in its *Report and Order* in this proceeding, but accepted them as a benchmark in CC Docket No. 91–35). The mid-range level of these commissions, according to APCC's 1996 data, is $0.62 per call. *See id.*

[97] *Id.* at 9–10 (explaining that the sent-paid toll call surcharge is the amount, above the standard transmission charge, that a PSP charges for the convenience of making a toll call from a payphone). The middle-range price of such a call is $1.40 per call. *See id.*

[98] *Id.* at 9 (stating that the average price of a completed 0− transfer call is $0.41).

[99] *Id.* at 10.

[100] *See, e.g.*, AT&T Reply at 35; CWI Reply at 2–4; CompTel Reply at i, 2–3; RCN Reply at 7–8, Sprint Reply at 17; WorldCom Comments at 4; Excel Reply at 7 (arguing that these surrogates do not overcome the uncompetitive characteristic of the current payphone market by virtue of the fact that payphone callers are a captive audience); Frontier Comments at 3 (arguing that commissions paid on 0+ calls include monopoly rents and locational monopolies); ITA Comment at 6–7 (arguing that compensation for 0+ calls includes other compensation factors, such as the PSP's promotion of the operator service provider through payphone placards, and that market surrogates in

Continued

Furthermore, carriers argue, sent-paid calls are not a reliable surrogate, because these charges cover such services as a payphone's capability to track time and amount, and recognize types of coins, services not needed for 800 subscriber calls.[101] MCI argues that these surrogates are not representative because they are narrowly tailored to specific types of calls.[102] Moreover, MCI contends, some of so-called surrogates apply to calls from telephones that are not even payphones.[103] Sprint argues that the only truly reliable indicator of the market for subscriber 800 and access code calls is what the market provided to PSPs for such calls prior to the imposition of the Commission's orders in CC Docket No. 91–35.[104] At that time there was no compensation to PSPs for these calls, and therefore, Sprint contends, the market price was zero.[105]

39. Excel argues that the Commission should start with a local coin rate at $0.25,[106] then subtract those costs unique to the local coin service—coin equipment and collection, coin rating, originating and terminating access from the local coin rate.[107] AT&T, CompTel, and CWI argue that the Commission should not rely on avoided costs in establishing the default compensation rate, because this method inappropriately compares the price of coin calls with the costs of coinless calls and may overcompensate PSPs. Nonetheless, if the Commission adopts this method, AT&T argues, the Commission must set the local coin rate at $0.25 and determine the actual avoided costs related to coinless calls,[108] and CompTel and CWI argue that the Commission should subtract the costs of tracking and billing compensation.[109] MCI argues that if the Commission adopts a top-down approach, it should calculate the default rate by subtracting the coin specific costs from the cost of a coin call, not from the market rate.[110] RCN argues that the Commission should determine a nationwide default rate and then subtract those costs that are unique to coin calls.[111]

40. The Coalition argues that the avoided cost methodology will not produce a per-call compensation rate lower than the deregulated coin rate, and in fact, will increase the amount of compensation owed to the PSPs.[112] Furthermore, the Coalition argues, avoided cost methodology will not produce competitive outcomes, because joint and common costs are a significant portion of the total costs, and the market does not price goods or services on costs alone.[113]

2. *Discussion*

41. In the *Payphone Orders,* we found that the market rate for a local coin call is $0.35 and we stated that this is also the rate for access code and subscriber 800 calls for the first year of per-call compensation. In response to the court's concern that there may be differences in cost between providing local coin calls and subscriber 800 and access code calls, we have evaluated the evidence on the record to develop a default rate for access code and subscriber 800 calls that reflect those cost differences. On the record, parties discuss several cost factors suggesting that compensation for access code and subscriber 800 calls should be either above or below the market price for coin calls.[114] In section (a) we conclude that based on differences in costs, a market rate for access code and subscriber 800 calls likely would be between 5.9 and 7.3 cents lower than the market rate for a local coin call, resulting in a rate of $0.284. In section (b) we conclude that the parties failed to provide sufficient information to adjust the default dial access and subscriber 800 rate to reflect differences in the elasticities of access code and subscriber 800 calls compared with local coin service. Thus, we do not make any adjustment for elasticity differences.

a. *Adjustments to the Local Coin Market Rate Based on Cost Differences*

i. *General Approach*

42. Our general approach is to start with the market rate for local coin service ($0.35), and subtract costs directly attributable to coin calls and add costs specific to access code and subscriber 800 calls. The majority of the costs associated with a payphone are joint and common costs that are shared by the different types of calls made by means of the payphone. These costs do not increase or decrease as the number or composition of calls changes at a particular location. By making no adjustment to the coin rate for these costs, we conclude that each call placed at a payphone should bear an equal share of joint and common costs.

43. The long distance and paging companies argue that we should limit the costs attributed to access code and subscriber 800 calls to the costs that would be incurred from providing access at a coinless payphone; coin-related costs should not be included. Under this theory, all other costs that are incurred to support a payphone coin call would be attributed to coin calls and either removed from any market-based rate or excluded from any other type of cost estimate.[115] PSPs, however, maintain that few locations could support a coinless instrument.[116] Instead, they explain that most payphones are installed to handle both coin and coinless calls.[117]

44. We agree with the IXCs, and paging companies, that costs directly associated with the coin mechanism should be borne by coin calls. Under their general approach, however, compensation for subscriber 800 and access code calls would not fairly contribute to the recovery of joint and common costs of payphone service that would occur, even if the payphone is used solely to place such calls. In our view, such joint and common costs are not "additional" costs occurred to provide local coin calls. Hence, compensation for subscriber 800 and access code calls should contribute to the recovery of such costs. Our calculation assumes that each call will contribute to a multi-use payphone's joint and common costs.

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general include costs not incurred in PSP origination of dial-around calls, such as LEC line costs, premise owner commissions, and billing and collection charges); PageNet Reply at 11 (arguing that 0-transfer rates include compensation for operator assistance services that subscriber 800 calls do not use). *See infra para.* 62 for a more thorough discussion regarding commissions.

[101] PageNet Reply at 11–12.

[102] MCI Reply at 6 (arguing that the 0+ commission represents the value to the IXC of being a payphone's presubscribed carrier).

[103] *Id.*

[104] Sprint Reply at 18.

[105] *Id.*

[106] Excel Reply at 3, 9 (arguing that setting the default rate at the highest deregulated rate in the country is contrary to competition, and further that the proceeding before the Massachusetts DPUC regarding NYNEX's payphone rates demonstrates that the market rate for local coin calls should not be higher than $0.25 per call).

[107] Excel Comments at 4.

[108] AT&T Reply at 24 (stating that no charges should be added to this rate such as ANI or completion costs for local coin calls).

[109] CompTel Comments at 14 n.7.

[110] MCI Comments at 3.

[111] RCN Comments at 4 (stating that the per-call rate should not exceed the market-based local coin rate).

[112] Coalition Reply at 13–15 (arguing that an avoided cost methodology not only requires the deduction of certain costs, but also the addition of costs that PSPs must incur for a noncoin call).

[113] *Id.* at 14. *See infra* paras. 64–67 regarding demand elasticity.

[114] *See, e.g.,* AT&T Comments at 11 (per-call compensation should be lower than the default rate); Sprint Comments at 9; APCC Comments at 8; Coalition Comments at 30–33 (stating that per-call compensation should be above the local coin rate to account for implementing ANI and other costs).

[115] AT&T Comments, Analysis of Economist David Robinson at 6 [hereinafter AT&T Comments, Robinson]; MCI Comments at 3.

[116] *See* Peoples Comments at 7.

[117] Coalition Comments, Analysis of Economist Jerry A. Hausman, Ph.D. at 9 [hereinafter Coalition Comments, Hausman].

45. We reject AT&T's contention that using a coinless payphone results in a per-call compensation rate of 11 cents per call and that this rate should be the basis for selecting a per-call compensation rate. We note that AT&T divided its monthly costs to install, operate, and maintain a coinless payphone ($76.85) by the number of calls at a coin payphone estimated by APCC.[118] The APCC study showed that the average payphone carried 713 calls per month, and that 511 of these calls were coin calls and 202 of these calls were coin-less calls.[119] It is more reasonable to assume that you would divide AT&T's estimated monthly costs for a coinless payphone ($76.85) by 202, the number of coinless calls. This calculation results in a cost of 38 cents per call, rather than the 11 cents estimated by AT&T. If the number of calls at coinless payphone were adjusted for a marginal location as we do in our analysis below, the per-call cost would be even greater. Thus, we conclude that the 11 cent rate obtained by AT&T in its analysis would not be an appropriate per-call compensation rate for subscriber 800 and access code calls.[120]

46. *Selecting the number of calls to represent a low traffic location.* Any analysis of the costs incurred for a call from a payphone must be based on a particular number of calls. Most of the parties presented cost information based on coin payphones serving locations with an average amount of calling. We believe, however, that it is appropriate to analyze cost for a location with less than average calling. Prices in competitive markets tend to be set at the marginal cost of production. For payphone service, the marginal unit of production is the installation of a payphone at a low traffic location. If prices for payphone calls increased, providers would be willing to install more payphones; however, customers would likely place fewer calls. At the equilibrium price for payphone calls, newly installed payphones would be expected to generate just sufficient calls to earn only a normal return on investment. Thus, we believe that setting a default compensation rate to achieve fair and reasonable compensation requires that a payphone operator be able to cover costs at a low traffic location. A single instrument would be required to provide both coin and coinless calls at such a location, with neither class of calls, by itself, sufficient to justify installation of a payphone.

47. We select the number of calls to represent a low traffic location by estimating the number of calls that could cover all of the costs of operating a payphone with the exception of commissions paid to location owners. This number represents the lowest number of calls at which a payphone could be operated without requiring a subsidy. Most of the costs associated with a payphone do not vary with the number of calls made at an individual payphone. Thus an individual call must cover its own marginal costs as well as a share of the non-varying costs. The contribution made by an individual call is the price of the call less the marginal costs of the call. If the price of calls remains constant, each additional call adds a fixed amount of contribution. If the number of calls is high enough, the total of this contribution will exceed the total of non-varying costs, including a normal return on investment. The amount by which total revenue exceeds total cost is referred to as economic rent. In the long run, premises owners will be able to extract any economic rent from payphone owners through commissions.[121] If a location generates only enough traffic to support the installation and upkeep of a payphone, however, there will not be any commission payments. Some PSPs may choose to pay standardized commission amounts.[122] These companies will not serve as wide a mix of locations. All things being equal, the owner of a high traffic location would seek out the potential profits by choosing the PSP that is willing to pay the highest commissions. On the other hand, if the owner of a low traffic location insisted on a commission, no PSP would be willing to install a new payphone at that location because no PSP could pay the commission and generate a sufficient return on its new investment.[123] Accordingly, a marginal location is a location where traffic just covers costs other than premises owner commissions.

48. Based on the data provided by the commenters, it is necessary to complete several steps to determine the appropriate number of calls needed to sustain a payphone at a marginal location. As explained more thoroughly below, we rely on APCC cost data, because these data are representative of the payphone industry as a whole. However, APCC did not provide a breakdown of the 689 calls that it reported as the average per payphone when it collected the cost data. Therefore, we first used APCC data from the call type study—which provided data based on an average of 713 calls—to determine the proportion of access code and subscriber 800, coin and other calls for the 689 calls reported in the cost study. Second, using these derived call numbers, we estimated the amount of coin and other calls necessary to generate commission payments, and subtract those calls to yield the number of calls needed to sustain the marginal payphone.

49. We use APCC data to estimate the number of calls per month that an average PSP would need at a location to cover costs other than commissions.[124] APCC reported $242 monthly cost per payphone, including $45 in commissions, based on an average of 689 calls of all types.[125] Until October 1996, $6 of the monthly cost per payphone was met from dial around compensation and the balance of the monthly cost per payphone had to be met with coin revenues and revenues from 0+, 0−, and 00− calls.[126] To determine the amount of revenue that the average coin, 0+, 0−, and 00− call had to produce so that the average number of calls would cover total costs, we had to determine the total number of each such call type. Therefore, we used the data in the APCC call distribution study, which produced a total of 713 calls of all call types—152 access code and subscriber 800 calls and 561 coin and other calls—and applied this breakdown to the 689 calls in the cost study to develop a call distribution.

[118] AT&T Comments, Robinson at 12.

[119] APCC Comments, Attachment 4 at 2.

[120] Other parties believe that AT&T's estimated monthly cost of a coinless telephone is too low. Coalition Reply at 29.

[121] Several PSPs suggested that commissions should be included in the cost of providing access code and subscriber 800 calls. *See infra* para. 62.

[122] *See* TEI Comments at 8.

[123] Existing LECs require premises owners to pay for placement of payphones, rather than receive a commission, if there is a sufficiently low volume of coin traffic at a location.

[124] APCC submitted data from two different studies; one pertaining to cost, and one pertaining to call type volumes. See APCC Comments, Attachment 3 ("Weighted Average of Cost and Call Volume Data from 46 Payphone Companies"), Attachment 4 ("Results of APCC's 1996 Survey of Payphone Call Volumes"). For this analysis we needed the following information: average cost per payphone; average commissions paid to premises owners per payphone; average number of calls per payphone; the marginal cost per coin call; and breakdown of average call types per payphone. APCC and CCI provided a breakdown by call type; in relying on APCCs data, we note that other commenters supplied APCC's call type data in their comments as representative of the payphone industry, and further, that CCI's call data is similar to that of APCC. *See, e.g.*, CWI Comments, LCI Comments, CompTel Comments. APCC and several other commenters, such as Peoples and CCI, provided cost data; however, we selected the APCC data because it is the most thorough and representative of the payphone industry averages.

[125] *See* APCC Comments, Attachment 3.

[126] *See OSP Second Report and Order*, 57 FR 21038 (May 18, 1992); 7 FCC Rcd at 3251.

Applying the representative percentages of the call types resulted in the following distribution: 147 access code and subscriber 800 calls, 494 coin calls, and 48 other calls.[127] Thus, to recover the $242 in monthly costs at an average location, the PSPs surveyed by APCC had to collect an average of 43.5 cents per call in revenue from coin and other calls.[128]

50. The APCC data illustrate that PSPs pay an average of $45 per month in commissions. For the purposes of this analysis, we impute the number of calls at a low traffic location by taking the number of calls at an average location, and subtract the number of coin and other calls that would produce marginal revenue of $45. As explained above, to break even at an average location, PSPs must have generated 43.5 cents per call from an average number of coin and other calls. This revenue per call, however, is offset by about 4.8 cents of marginal cost per call,[129] meaning that payphone providers must realize about 38.7 cents in average net revenue per call. Dividing $45, the average compensation to premises owners, by 38.7 cents, which is the marginal revenue per call, results in 116 coin and other calls. In other words, if the number of coin and other calls is decreased by 116, all other things being equal, the PSP's net revenue would be reduced by $45 (116 calls times 38.7 cents per call). Assuming a proportionate reduction in all calls, a break even or low traffic location would have 116 fewer coin and other calls and 31 fewer access code and subscriber 800 calls.[130] Using the total number of all calls from the cost study (689), we subtracted 116—the number of coin and other calls that would generate $45 in commissions. This resulted in 573 calls. We also expect that the number of access code and subscriber 800 calls at a marginal payphone location would be less. As noted above, we determined that 147 of the 689 calls at an average location would be subscriber 800 and access code calls. To reduce that amount (147) by the decrease in access code and subscriber 800 calls that would be originated at a marginal location, we then determined how many of the remaining calls were subscriber 800 and access code calls. Comparing the numbers from the APCC call volume study, we determined that the number of coin and other calls (excluding subscriber 800 and access code calls) was approximately 21.4% less in the cost study.[131] Assuming that the subscriber 800 and access code calls also would decrease proportionately, we determined that there would be 31 fewer subscriber 800 and access code calls.[132] Thus, we subtracted 31 from 573, which results in 542 calls. Accordingly, we use this number, 542, as the total number of calls that would be made from a low traffic location.[133]

ii. *Estimate of avoided and added costs.*

51. The parties submitted data on avoided and added costs of dial access and subscriber 800 calls compared with local coin calls. Different parties have different costs by category due to differences in the type of location served and differences in accounting treatments. Line charges, for example, vary from state to state. One party may treat a specific cost as overhead while another party might include the same sort of cost a direct cost of maintenance. It is not possible to fully reconcile differences in cost estimates by analyzing the data filed on the record. Accordingly, we have used the information submitted by the parties along with information from Securities and Exchange Commission 10K filings to develop ranges within which cost for an average PSP might reasonably be expected to fall.[134]

52. *Coin Mechanism Capital Costs.* While a single payphone may be installed to handle both coin and coinless traffic, the direct costs of the coin mechanism should be recovered by coin calls. After installation, the capital costs of a payphone become fixed. Because we are looking at the long run, where all costs are avoidable, we consider the decision made by the PSP at the time the phone is installed. When a payphone provider considers installing a telephone at a new location, it must consider whether the additional coin traffic at that location would justify the additional cost of installing a coin telephone. The PSP would not install a coin payphone instead of a coinless payphone unless the additional coin traffic would at least cover the additional costs of a coin mechanism. Therefore we conclude that costs directly associated with the coin mechanism should be attributed to coin traffic. We assume that the market rate for local coin calls recovers these costs and therefore conclude these costs should be removed from the adjusted market rate.

53. David Robinson, in a study submitted by AT&T, provided the most detailed information on the costs of purchasing and installing different types of telephones. Independent PSPs typically use smart payphones. Robinson estimated that new smart coin payphones cost about $900 to $1200 per unit compared with $200 to $250 per unit for coinless units.[135] The differences in cost are primarily due to equipment used to accept, count, and hold coins.[136] Some cost differences,

[127] *See* APCC Comments, Exhibit 4 (providing specific amount of numbers of each call type). The APCC survey found $242 per month total cost based on an average of 689 calls per month. The APCC call distribution study (APCC Comments, Exhibit 4) showed 713 total calls, comprised of 152 access code and subscriber 800 calls (21%), and 561 coin and other calls (79%)). We applied this breakdown to 689 calls to estimate 147 access code and subscriber 800 calls and 542 coin and other calls. The 542 coin and other calls includes 411 and 555 calls that we treated as coin calls for our analyses.

[128] The quantity ($242 less $6 dial around compensation) divided by (542 calls) results in 43.5 cents per call. The $6 in dial around compensation is based on historic data. We have used historic data rather than the default compensation rate times projected access code and subscriber 800 calls in order both to meet the concern that the compensation rate be fair to existing payphone providers and also because it is difficult to forecast the future number of access code and subscriber 800 calls.

[129] We find below that the marginal collection, maintenance, and lines costs of a coin call are between 4.6 and 6.0 cents per call. The APCC usage study shows that if access code and subscriber 800 calls are omitted, about 91% of the remaining calls are strictly coin (i.e., excluding 411 and 555 calls). To determine an average cost for coin and other call types, we used an average marginal cost for a coin call multiplied by the percentage of coin calls. This translated to 5.3 cents of marginal cost for a coin call [(4.6+6.0)/2) multiplied by the percentage of coin calls (91%), which results in 4.8 cents per average coin and other call.

[130] Since our default compensation rate will cover more joint and common costs than the $6 per month compensation rate in effect through October 6, 1996, payphones will become economically viable at more locations, satisfying one of the goals of the 1996 Act.

[131] Using the number 116 calls, we divided 116 coin and other calls (excluding subscriber 800 and access code calls) by 542 total coin and other calls (again excluding subscriber 800 and access code calls). This resulted in a reduction of 21.4%. This percentage does not indicate that the type of calls declined, but rather, is a percentage used to develop the relative proportions of the various call types from the call volume study to the cost study.

[132] This assumes that access code and subscriber 800 calls also would decline by the same percentage as would coin and other calls. 116 coin and other calls times (152 average access code and subscriber 800 calls / 561 coin and other) equals 31 fewer access code and subscriber 800 calls.

[133] We use the 542 number of calls at a low traffic payphone location in the following sections of the market based analysis: coin mechanism capital costs; line savings (in part); and ANI ii.

[134] *Bell Atlantic Telephone Companies* v. *FCC*, 79 F.3d 1195, 1202–04 (stating that the Commission is not required to include all data when determining a rate, and that the Commission has the authority to exclude suspicious data or statistical outliers).

[135] AT&T Comments, Robinson at 3.

[136] *See* Coalition Comments, Report of Arthur Andersen on per-call compensation and cost calculations, Carl Geppert at 8 (Aug. 26, 1997). Local exchange carriers, in contrast, have an installed base that typically consists of "dumb" payphones that must rely on telephone company central offices for functionality. The Coalition submitted a study by Carl Geppert for Arthur Andersen citing New England Telephone data for New Hampshire to show that the average costs of coin and coinless telephones were similar. Other parties have presented information to the effect that

however, may be due to quality features that allow the payphone to be used in harsher environments. We selected the $900 figure for smart coin telephones as an amount that would be suitable for general locations instead of the $1200 figure, because the latter figure likely included additional features that go beyond the standard smart coin telephone that would not be necessary at the general location. We determine that $250 is an appropriate amount for the coinless phone operated in a general location, to reflect some quality features, and further, because there is not a significant difference in the capabilities among the coinless phones and the difference between the estimates ($200 to $250) is not significant. The difference in price, from $900 to $250, $650 per telephone, would be due to added costs associated with coin traffic. Robinson also estimates that a smart coin telephone requires $60 more for installation than does a coinless telephone due to additional testing and programming for the coin rating and collection functions.[137] Thus, we estimate a total investment cost of $710 per payphone that is related to coin functions.[138] This equates to $12.36 in investment costs per month for a coin telephone.[139] Thus, we impute that the market rate for local coin service includes 3.1 cents per coin call at a low usage location and that this amount represents an avoided cost for dial around and subscriber 800 calls.[140]

54. *Line Savings.* In some areas, all payphones are charged per-message or per minute charges for all local calls. In other areas, all payphones use unmeasured lines. In still other areas, payphone providers can choose between using some form of measured service and unlimited calling. PSPs taking measured service pay message charges for local coin calls, but not for access code or 800 subscriber calls. This represents a marginal cost difference of coin versus coinless service. Based on the record, we conclude that the average cost savings for line charges is about 2.5 to 3.0 cents per call.[141]

55. Collection and Maintenance Savings. The parties concur that coin collection costs are related to coin calls, that coin telephones have higher maintenance costs than coinless telephones and that maintenance costs increase as the number of coin calls increases.[142] It is difficult to separate maintenance from coin collection costs, however, because some coin collection and routine maintenance may occur at the same time.[143] Not all maintenance is related to coin calls.[144] For example, key pads and handsets are used for both coin and non-coin calls and vandalism may be directed against the phone or the enclosure as well as targeted against the coin box. Based on the record, we conclude that the average savings from coin collection and maintenance is 2.1 to 3.0 cents per call.[145]

56. *Bad Debt / Collection Charges.* Peoples identifies some collection and bad debt expenses that it attributes solely to compensation for access code and subscriber 800 calls. Under the interim compensation plan, Peoples was unable to collect from IXCs approximately $4.02 per payphone per month, which translates to $0.03 per access code and subscriber 800 call.[146] Conversely, CompTel alleges that Peoples' bad debt expenses arose primarily from operator service operations.[147] CWI opposes including any allowance for increased collection costs of access calls, arguing this is not a cost of access and that the IXCs also bear such costs.[148] Furthermore, AT&T notes that collection costs should decrease steadily with the implementation of ANI and other Commission requirements.[149] CWI and CompTel contend that per-call compensation should not include billing or bad debt costs.[150] Neither the Coalition nor the other PSPs included specific estimates of increased

a coin mechanism by itself would cost less than $100. Stronger, theftproof housing, however, also is required if a coin mechanism is to be included. We conclude that the best information is the current prices of comparable telephones with and without coin mechanisms and that the Robinson data is most suitable for this comparison.

[137] AT&T Comments, Robinson at 3.

[138] In reviewing costs *infra*, we use data from Peoples and CCI's 10K reports to estimate that the total new investment for a payphone would be about $3000, including support facilities. Thus, the $710 in coin related costs represents about a quarter of the total new investment.

[139] Equal monthly payments of $12.36 would depreciate $710 over a 10 year life and earn a return of 11.25% on net plant, allowing for the statutory federal income tax rate of 34%. We selected a 10 year life consistent with AT&T and Peoples. See AT&T Comments, Robinson at 5; Peoples 1996 10K at 31 (using a 10 year straight line depreciation rate for public payphones. Cf. CCI Comments at 10 (using a 7 year life). *See also infra* para. 59 for further explanation of interest rates.

[140] This is not a marginal cost per coin call. Rather, it represents the amount included in the market rate of local coin calls to recover the costs of equipment attributed to coin service. For this purpose, the market rate was assumed to be based on a low traffic location, meaning 542 total calls, including a total of 399 coin, 411, and 555 calls.

[141] *See* Coalition Comments, Andersen at 4 ($0.02); CCI Comments at 9 ($0.02); Peoples Comments at 11 ($0.04). We note, however, that six of the eight Coalition members reported no measured service lines, and further, that the line savings per call was $0.07 and $0.08 for the other two. In a deregulated environment, LECs will have incentives to select measured service lines for payphones when such lines would be the low cost alternative. Accordingly, the LEC data is not representative of costs for the PSPs. The Peoples estimate contains some avoided toll costs in addition to avoided coin collection costs. Peoples did not provide sufficient information to separate this part of the costs. Accordingly, that amount is too high to serve as a high range for estimates. *See also* AT&T Comments at 4 ($0.029) (deriving this figure as total billing cost, $15.03 local usage for a smart phone divided by 511 coin calls as represented in the APCC study, Attachment 4 at 2). Telaleasing data was excluded because its estimates are radically different from the estimates filed by any other party and because its data could not be verified by parent company 10K filing. *See* Telaleasing Comments at 7; Davel 10K at 19. Also, all of Sprint's payphones appeared to be in non-measured service areas, which is not representative of the industry average, so we did not use Sprint's line cost data when determining line savings. Sprint Reply, Exhibit 1 at 2. Line costs are dependent on local exchange carrier rates which vary by community. We do not believe that the industry average would be much higher than the figure derived from AT&T data. Accordingly, we select 3.0 cents per call for the high call estimate (slightly higher ligure than that derived from AT&T data). We select 2.5 cents per call as the low estimate, based on an average of the AT&T and CCI data.

[142] *See, e.g.*, AT&T Comments, Robinson at 7.

[143] This would more likely be the case at a low traffic location than a high traffic location, since more coin pickups are scheduled for high traffic locations.

[144] Peoples Comments at 13.

[145] Coalition Comments, Andersen at 4 ($0.02 attributed to collection and maintenance); CCI Comments at 9 ($0.01 based on comparing the collection and maintenance cost of a coin call of $0.06 and maintenance cost of an access code call of $0.05) This probably considers most, if not all, maintenance costs as joint and common. *See also* Peoples Comments at 13 ($0.03 attributed to collection and some avoided maintenance); AT&T Comments, Robinson at 7 (maintenance: $.018 = $7 difference in coin vs. coinless monthly maintenance divided by 399). Note that the coinless phones Robinson studied might have had lower maintenance expense than the coin phones in his study not because of coin induced wear, but rather because the coinless phones were in sheltered locations. AT&T Comments at 9 (collection: $0.047 based on $13.50 collection costs per $100 of coins times 35 cents per call). Robinson's collection costs represent the cost of collections if performed on a stand alone basis. PSPs often perform maintenance and collections at the same time and much of the combined cost should be considered joint and common to all calls, rather than solely attributable to coin calls. Accordingly, we selected 2.1 cents as the low estimate (the Coalition estimate allowing for slightly higher cost per call at a low traffic location) and 3.0 cents as the high estimate (the Peoples estimate with no adjustment).

[146] Peoples' 1996 Form 10K indicates that Peoples financial books for 1995 Included approximately one million dollars in additional bad debt reserves related to both the inmate and payphone operations. Peoples 1996 10K at 29 (filed with the Securities and Exchange Commission Mar. 31, 1997). This translates to about $2 per payphone per month. Since there was no change in the FCC's payphone compensation plan in 1995, this increase is not attributable to access code and subscriber 800 calls. Thus, some, if not most, of the $4.02 per payphone per month cited by Peoples should not be viewed as an increased cost attributable solely to access code and subscriber 800 calls. Peoples Comments at 13.

[147] CompTel Reply at 13.

[148] CWI Reply at 11.

[149] AT&T Reply, Robinson at 11–12.

[150] CWI Reply at 11; CompTel Reply at 11.

collection and bad debts. As such, we do not have sufficient information to attribute an amount to bad debt and/or collection charges.

57. *ANI ii.* The Commission's rules require that LECs provide certain automatic number identification information (ANI ii) to the IXC with each call. These digits provide IXC's with automated information that enables them to bill, block, and track calls. On the record, the parties disagree about the costs associated with the provision of ANI ii digits, and further, who should bear those costs.[151] USTA estimated the cost of providing ANI ii digits through hardcoding and through FLEX ANI. The estimated total capital cost for hard coding the digits was about $1.035 billion of which $558 million was for upgrading all non-equal access switches and $477 million was for hard coding switches.[152] Sprint notes that the USTA figure assumes equipment upgrades for every non-equal access switch, while many of these switches do not support any payphones.[153] Given that not all non-equal access switches would be upgraded, and that the upgrade would benefit all users of the switches, it seems unlikely that all the upgrade expense would be attributed to payphone service. For the purpose of translating the USTA cost estimates into additional pay telephone costs, we assume that $600 million of additional LEC investment would be recovered from increased payphone line rates. $600 million in increased investment recovered over 10 years would require increased monthly line charges of $5.65.[154] Divided by the low traffic location number of calls, 542, would equal approximately $0.01 per call.

58. AT&T notes that less expensive alternatives to the plan advanced by USTA exist.[155] The Coalition indicates that if LECs are allowed to use a combination of FLEX ANI or original line screening technology, payphone digit identification costs may be as low as $0.01 per call.[156] As discussed above, we have evaluated the data supplied by the USTA, the Coalition, AT&T, and Sprint, and we estimate a cost of $0.01 per call.

59. *Interest.* Several payphone providers note that they have the use of coin receipts almost immediately while they must wait to collect compensation on access calls.[157] Peoples, for example, collected payphone compensation for access calls completed between October 8 and December 31, 1996 in April 1997.[158] Accordingly, we conclude that the delay in receipt of compensation for access calls represents an additional cost of providing access code and subscriber 800 service calls that would not be included in the market rate for local coin calls.

60. AT&T uses 11.25% as the interest rate and the return requirement for payphone investment.[159] APCC claims that the appropriate interest rate for many payphone providers would exceed that rate significantly.[160] Peoples used a 10% interest rate in its calculations.[161] Most payphones, however, are owned by large local exchange carriers, whose authorized interstate rate of return has been 11.25% representing a weighted average of debt and equity costs.[162] Accordingly, we conclude that 11.25% is the appropriate cost of capital for payphone providers in this context. Thus, the delayed receipt of compensation for access code and subscriber 800 calls justifies an upward adjustment of .8 cents (11.25% for 3 months times the market rate adjusted for other costs).

61. *Opportunity Costs.* Teleport contends that the Commission should recognize the opportunity costs associated with use of a payphone for non-coin calls.[163] This cost theoretically arises because the payphone provider does not have the opportunity to realize coin or 0+ commission revenue whenever its payphone is being utilized for an access code or subscriber 800 call. Sprint, however, notes that the payphone will be available for 0+ and coin calls 98.2% of the time based on average amounts of access code and subscriber 800 calling. Sprint also states that when a given phone is not available, another phone from the same company may be available, so the call is not necessarily lost.[164] Therefore, we make no adjustments to the local coin rate based on opportunity costs.

62. *Commissions.* Several IXCs argue that commissions paid to location owners on 0+ and 1+ calls should not be attributed to per-call compensation rate.[165] CompTel argues that these commissions have been paid on 0+, 1+, and local calls, and recovered through these revenues. CompTel and RCN argue that there is no assurance that these commissions are just and reasonable.[166] WorldCom argues that 0+ commissions should not be included as a cost in computing per-call compensation because these commissions reflect the value of being selected as the default 0+ provider and as such are unrelated to the costs of providing subscriber 800 and access code calls. The Coalition and the independent PSPs propose that per-call compensation default be set on the basis of the average commission received by independent payphone providers on 0+ calls to set the rate for access code and subscriber 800 calls.[167] CompTel and

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[151] *See, e.g.*, Coalition Comments at 19 (stating that the implementation of the Commission's ANI requirements for the provision of payphone specific coding digits might ultimately add $0.05 to $0.08 to the cost of a access code and subscriber 800 call); AT&T Reply at 27–28 (arguing that less expensive alternatives exist to the plan promoted by USTA); Excel Reply at 5; RCN Reply at 6. The Coalition based its figure on USTA estimates that LEC investments would increase by about $1.035 billion dollars to implement ANI, that all of the cost would be borne by PSPs, and that such costs should be attributed entirely to access code and 800 subscriber calls. *See* Coalition Comments at 17. Sprint points out that most of the cost cited by USTA would arise from modifying all switches in non equal access areas. However, Sprint points out that many switches would not need to be modified because there are only 10,000 payphones in non-equal access areas compared with 3400 exchanges that lack equal access. *See* Sprint Reply at 8.

[152] Letter to Michael Carowitz, Common Carrier Bureau, from Keith Townsend, USTA, CC Docket 96–128, at 5 (July 28, 1997); USTA Petition for Waiver, CC Docket No. 96–128, Exhibit 1, 5 (Sept. 30, 1997).

[153] Sprint Reply at 8.

[154] $5.65 is the levelized monthly amount per payphone that would depreciate $600 million over 10 years and earn an 11.25% return on net investment, allowing for income taxes at the statutory rate of 34%.

[155] *See* AT&T Reply at 27–28. *See also* Excel Reply at 5; RCN Reply at 6.

[156] Coalition *Ex parte*, Sept. 26, 1997.

[157] APCC Comments at 15; CCI Comments at 9–10; TEI Reply at 5.

[158] Peoples Comments at 13.

[159] AT&T Comments, Robinson at 5.

[160] APCC Reply at 14.

[161] Peoples Comments at 10.

[162] *Representing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, 55 FR 51423 (December 14, 1990); 5 FCC Rcd 7507 (1990).

[163] Teleport Reply at 6. Teleport Comments at 3, 6 (arguing that whatever cost differences may exist are eliminated by the opportunity costs associated with noncoin calls because coin paying customers cannot use a payphone if it is being used by a noncoin customer).

[164] Sprint Reply at 4.

[165] *See, e.g.*, CWI Comments at 9, n.7; CWI Reply at 9; CompTel Comments at 14; CompTel Reply at 11; Excel Reply at 4; LCI Comments at 8. *See* ITA Reply at 2, 4 (requesting that the Commission adopt an incremental cost approach, and that such a rate should not include premise owner commissions); Sprint Reply at 7 (stating that pre-existing commission payments are recovered from local coin and 0+ calls); Frontier Comments at 3 (arguing that commissions cannot be included in computing the per-call compensation amount because compensation based on commissions paid on 0+ calls would allow monopoly rents for locational monopolies).

[166] CompTel Reply at 12; RCN Reply at 5 (arguing that without safeguards, PSPs have no incentive to keep rates low).

[167] APCC Comments at 13 (stating that commissions are unlikely to vary except in relation to the price of calls and that location owners demand and receive commissions on every form of revenue derived from a payphone including subscriber 800 and access code calls); CCI Comments at 9 (stating that commissions must be paid to location owners so that payphones can be placed for public use). CCI treated the costs as equal for coin calls and subscriber 800 and access code calls while noting that some marginal differences

RCN argue that there is no assurance that these commissions are just and reasonable.[168] Accordingly, we do not need to make any adjustments to reflect commission costs.

63. *Total Adjustments to Market-Based Rate.* The preceding analysis suggests that costs associated with coin equipment, line, coin collection and maintenance are not directly attributable to provision of access code or subscriber 800 call. We estimate that in total, between 7.7 cents and 9.1 cents per call are directly attributable to local coin calls, and thus should be subtracted from the market rate. There are uncertainties with the estimates but we found no evidence to suggest a preponderance of either high or low biases. On the other hand, we adjust the local coin market rate upward by 1.0 cent to account for additional costs to PSPs resulting from ANI ii implementation to identify payphone originated calls for the benefit of IXCs, and 0.8 cents for interest attributable to the delay in compensation for access code and subscriber 800 calls. These additions and subtractions produce an adjusted market-based range of $0.277 to $0.291. The midpoint of that range is $0.284. Thus, we conclude that the surrogate or adjusted market default price is $0.284 per access code and subscriber 800 call.

b. *Adjustments to the Local Coin Market-Rate Based on Demand Differences*

64. The Coalition filed a study by Dr. Hausman that adjusts the local coin market rate for differences in demand. Dr. Hausman explains that in an industry with a significant amount of joint and common costs, competitive firms take into account demand conditions and competitive conditions as well as costs when setting price.[169] A competitive firm recovers joint and common costs through markups over marginal costs. Dr. Hausman states that the markups are set so that the firms recover total costs. Dr. Hausman then asserts that services, where the demand is relatively price elastic, compared to other services provided over the joint facility, would receive lower markups.[170] Dr. Hausman uses several methods to translate relative elasticities into relative prices for coin calls versus access code and subscriber 800 calls.[171] Dr. Hausman uses derived elasticities to show that access code and subscriber 800 services are less elastic than local coin calling.[172] His analysis concludes that the Commission should set the default compensation rate at the local coin rate plus approximately $0.07 to $0.08 per call.[173]

65. AT&T replies with a study by Dr. Warren-Boulton, who contends that the derived elasticities presented by Dr. Hausman significantly underestimate true elasticities. Dr. Warren-Boulten notes that customers faced with a $0.35 increase in toll rates at payphones likely would substitute toll services that did not increase in price, rather than simply deciding not to make the calls.[174] This view is supported by MCI's comment that many 800 customers are interested in blocking subscriber 800 calls from payphones to avoid paying the compensation charge.[175] MCI, however, suggests that the demand for coin calls is significantly less elastic than Dr. Hausman suggests.[176] These customers may anticipate that at least some potential callers subsequently would make a subscriber 800 call from another location.

66. Dr. Hausman's derived elasticities are sensitive to several of his underlying assumptions. He based the average price of an access code call on historic AT&T data. These data probably overstate the current average price for an access code call because many firms exclusively operate by providing prepaid calling cards, which do not include a surcharge,[177] and because there have been significant decreases in some interstate and international toll rates. Furthermore, Dr. Hausman uses the overall toll elasticity as the elasticity for dial around access calls. Customers placing access code calls, as opposed to 0+, 0-, and 00-calls, have already made choices based on perceived price differences.[178] These customers therefore may be much more price sensitive than average toll customers, and may be far more willing to forego or delay calls than indicated by Hausman's derived elasticity. We conclude that the demand for access code and subscriber 800 calls are significantly more responsive to price than Dr. Hausman suggests.

67. We conclude that while differences in demand elasticities for access may prove useful to some firms in setting prices, the information presented in the current record evidences wide variations in assumed elasticities and the results are inadequate to determine whether access code and subscriber 800 service or local coin service is the more price elastic service. Because we do not have confidence in the elasticity analyses in the record given the variation in results, we decline to adjust the market-based default per-call compensation rate for differences in demand.

C. Alternatives to a Market-Based Compensation Rate

68. As noted above, some commenters request that we establish the default per-call compensation rate based on cost information filed by the parties in this proceeding. We decline to adopt this approach, but we have assessed the record evidence on this matter and have calculated a cost-based default rate below to validate that our market-based adjusted per-call rate is reasonable.[179]

1. *Comments*

a. *Costing Methodologies*

69. Several of the commenters argue that the Commission should derive a compensation rate based on the costs that are incurred to originate coinless calls.[180] Several of the IXCs request that

exist in the commission levels paid to coin as compared with noncoin calls. *See also* Peoples Reply at 11 (stating that commissions will not result in increased costs for the consumer).

[168] CompTel Reply at 12; RCN Reply at 5 (arguing that without safeguards, PSPs have no incentive to keep rates low).

[169] Coalition Comments, Hausman at 4–5.

[170] *Id.* at 11.

[171] Given the relative elasticities presented in the paper, these methods generally would produce market rates below $0.35 for local coin telephone calls.

[172] Hausman estimates that the local coin rate elasticity is about -.663. (Coalition Comments, Hausman at 11) Hausman estimates a derived elasticity for dial around calls by multiplying an elasticity for interstate calls (-.723) times the percentage that a $0.35 access cost would add to a dial around toll call, reported to have an average price of $2.16. Hausman makes a similar calculation using an elasticity of -.77 and an average call price of $0.50 for subscriber 800 calls. He calculates that the weighted average of these two derived elasticities is -.398, significantly less elastic than his estimated local coin call elasticity.

[173] Coalition Comments, Hausman at 28.

[174] AT&T Reply, Warren-Boulton at 4.

[175] MCI Comments at 4.

[176] MCI *ex parte* at 15 (Oct. 2, 1997).

[177] *See* ITA Comments at 8.

[178] For example, 0+ calls incorporate commission of $0.62 per call and toll calls that customers pay for by depositing coins incorporate commissions of about $1.40 per call. APCC Comments at 8–10.

[179] *See supra* paras. 30–40 for specific cost components discussed in the comments. These costs were discussed previously in determining for what costs the market-based rate should be adjusted, and are incorporated herein.

[180] *See, e.g.*, ACTA Reply at 6 (arguing that any compensation scheme should focus the recovery on the PSPs forward looking direct costs associated with the origination of coinless calls). AT&T Comments at 2; AT&T Reply at 2 (including the following costs: maintaining the payphone instrument, excluding coin-related functions and coin collection costs; basic line costs, excluding coin rating functionalities but including the monthly subscriber line charge and tariffed screening and blocking service from the LEC; and other reasonable expenses such as touch tone and 911 charges). AT&T and MCI argue that the Commission should adopt a cost-based compensation scheme based on a PSP's actual efficient costs to originate access code and

Continued

the Commission adopt a bottom-up methodology to calculate per-call compensation.[181] AT&T argues that a rate computed in this manner will be sufficient to provide for the widespread deployment of payphones, and would not require the Commission to engage in lengthy cost proceedings.[182] AT&T argues that its analysis is based on TELRIC, which, AT&T argues, is the most appropriate methodology in the circumstances. Borden, Champion, and Sitel [183] argue that the fair compensation rate must be based on a PSP's actual costs for handling 800 calling card calls. SDN supports a national rate based on verifiable long range incremental costs for all PSPs. Excel argues that the Commission should adopt a rate that reflects the actual costs incurred by an efficient PSP for delivering subscriber 800 and access code calls.[184]

70. CompTel and ITA argue that the Commission should base compensation for subscriber 800 and access code calls on the PSPs' incremental cost of originating these calls.[185] ITA contends that the Commission should use the cost of a payphone call as determined by Massachusetts Department of Public Utilities (Massachusetts DPU) and adjust that number downward.[186] Sprint and AT&T also argue that the Commission should use the coin rate filed by New England Telephone (NET) with the Massachusetts DPU indicating a per-call local coin rate of $0.167 as the point at which we should begin our analysis of a rate adjusted for costs related to coin calls.[187] The Coalition argues, however, that this cost study is not an appropriate basis for establishing per-call rate in this proceeding.[188] CWI, LCI, CompTel, and Sprint argue that the incremental costs to be included are the additional or marginal costs created by access code and subscriber 800 calls—additional maintenance and wear and tear for increased usage, and the per minute usage charges, if any, imposed by a LEC for originating access code or subscriber 800 calls.[189]

71. Alternatively, Sprint argues that if the Commission takes a fully allocated approach to costs, then the rate should be based on the most efficient "bellwether" PSP's costs minus costs related to coin functionality, local call completion and premises owner commissions from a local coin call.[190] Sprint rejects Dr. Hausman's view that costs of the least efficient (or marginal) provider should be used as the default rate to prevent the removal of payphones, arguing that this approach overlooks the Commission's policy that inefficiency should not be rewarded in a multiprovider market and that rates should be based on the costs of an efficient provider to promote competition.[191] The Coalition and APCC contend that Sprint's "bellwether" approach is flawed, because large, fixed joint and common costs that should be included as costs, were omitted; [192] relying on incremental costs only is inappropriate because the PSP cannot recover the total costs of providing the service; [193] and cost estimates for a single state are not representative.[194]

72. TRA and WorldCom argue that the Commission should apply total service long term incremental costs (TSLRIC) principles to determine forward looking costs on efficient provider would incur to provide access to noncoin calls.[195] CompTel, CWI, and LCI argue in the alternative that if the Commission wants access code and subscriber 800 calls to bear some of the costs to ensure that PSPs are fairly compensated, then the Commission should set the compensation rate based on forward looking direct costs for access code and subscriber 800 calls.[196] Frontier and RCN argue that the Commission should adopt a cost-based rate based on the costs of completing subscriber 800 and access code calls.[197] GCI argues that PSPs should be compensated solely for the costs of subscriber 800 and access code calls.[198]

73. PageMart and PageNet argue that the Commission should adopt a caller-pays rate. Alternatively, PageMart argues that it should remove the avoided costs of a coinless call from the compensation rate.[199] Alternatively, PageNet requests that the Commission adopt a cost-based approach that apportions only the additional costs that are incurred through the origination or subscriber 800 calls on a per-call increment, not per-call basis.[200]

74. CCI argues that the Commission should not adopt a cost-based methodology because a marginal cost rate does not fairly compensate all calls as required by Section 276 of the Act and does not address fair compensation for other types of calls from payphones or whether additional costs could be recovered through compensation available to PSPs.[201] CCI contends that if the Commission adopts a marginal cost standard, then the rates would need to be sufficient such that revenues would recover the total marginal costs of installing and operating payphones, which in the long run could increase long distance rates and force some PSPs out of business.[202]

75. Peoples and the Coalition argue that the Commission should not adopt a cost-based rate because the costs for local coin calls and dial around calls are similar, and further that access code and

subscriber 800 calls. *See* AT&T Comments at 2; MCI Comments at i.

[181] CPI Reply at 6. WorldCom Reply at 4. WorldCom cites the rates set forth in AT&T's comments ($0.11 per call), MCI's comments ($0.083 cents per call), and Sprint's Comments ($0.057 cents per call), and states that the Commission should adopt one of these approaches or a blended approach using several methods. *See* WorldCom Reply at 4–5.

[182] AT&T Reply at 10, 17–18.

[183] Sitel Reply (stating that $0.35 cents per call is too high and that such a rate could adversely effect small business due to increased telecommunications costs).

[184] Excel Comments at 3–4.

[185] CompTel Reply at 6–7 (stating that the rate should be based on the costs of an efficient provider to originate subscriber 800 and access code calls and noting that other call types would be compensated by market pricing); ITA Comments at 2 (stating that the rate should be based on economic costs including a reasonable profit for the PSPs).

[186] ITA Reply at 2, 5.

[187] Sprint Comments at 8–11; AT&T Comments at 15 n.12.

[188] Coalition Reply at 2.

[189] CWI Comments at 5; LCI Comments at 5 (stating that the only costs that are relevant are additional maintenance and wear and tear for usage attributed to access code and subscriber 800 calls); Sprint Reply at 3 n.5 (stating that although CWI, LCI, and CompTel raise the possibility that local usage charges should be included in marginal costs, Sprint is not aware that any LEC imposes such usage related costs for subscriber 800 and access code calls. Instead, Sprint states, the IXC carrying the call pays the LEC's access charges for the use of the LEC's network for call origination.). Sprint and CompTel also state that this method is appropriate because access code and subscriber 800 calls are by-products of payphone installation, not its primary purpose. Thus, the decision to install a payphone, Sprint and CompTel argue, is driven by the revenues the PSP anticipates from other types of calls such as 0+ and coin calls. Sprint Reply at 3; Comptel Comments at 10–13.

[190] Sprint Reply at 6.

[191] Sprint Reply at 5 (also arguing that the public is protected through the mandate for public interest payphones in the Act).

[192] Peoples Comments at 6–7; APCC Reply at 9.

[193] Coalition Comments at 21–23 (citing Reconsideration Order, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,268, para. 69).

[194] *Id.*

[195] TRA Comments at 19 (stating that a reasonable profit for PSPs could be included); WorldCom Comments at 4 (further stating that this rate should be based on the forward looking costs that an efficient PSP would incur).

[196] CWI Comments at 9; CompTel Comments at 13–14; LCI Comments at 7. CWI, CompTel, and LCI argue that costs to be included are the following: the amortized cost of installing a coinless payphone; costs of maintaining the equipment; and the cost of a basic phone line plus usage charges, if any, for subscriber 800 and access code calls. Costs for coin equipment and coin collections, terminating local calls, bad debt, depreciation, interest, commissions, and administrative or overhead charges not attributed to coinless calls should be excluded.

[197] Frontier Reply at 2; RCN Comments at 1.

[198] GCI Reply at 3.

[199] PageMart Reply at 6; PageNet Comments at 12.

[200] PageNet Reply at 27–28.

[201] CCI Comments at 15–16.

[202] *Id.* at 17.

subscriber 800 calls may be more costly than coin calls. Several of the PSPs and the Coalition further argue that a cost-based rate would lead to the removal of payphones with low call volumes or above average costs.[203] TEI argues that cost plus a fair rate of return is not appropriate, because the underlying costs are similar and there is seldom agreement regarding costs or a fair rate of return.[204] APCC argues that the Court did not require the Commission to adopt a cost-based methodology.

b. *Cost Components*[205]

76. *Equipment.* CWI contends that only forward-looking direct costs should be considered, including the amortized cost of installing a coinless payphone and the cost of maintaining the equipment, excluding the cost for coin equipment.[206] Several of the IXCs argue that coin equipment costs should be excluded when determining per-call compensation.[207] PageNet argues that coin related costs such as maintenance, repair and replacement for coin functions should not be included in determining per-call compensation.[208]

77. The Coalition contends that equipment costs are attributable to both coin and noncoin calls. Teleport contends that the fixed costs associated with installing a coin operated payphone, such as the cost of the payphone, the enclosure, the cable plant, and supporting network infrastructure, are attributable to both coin and noncoin calls.[209] APCC states that most payphone costs, including purchasing, installing, and maintaining equipment, are fixed and should be attributed to both coin and noncoin calls.[210]

78. CCI contends that monthly direct costs such as the telephone bill (6 cents per call), location owner commissions ($0.05 per call), maintenance and collection ($0.05 per call), parts and supply are properly attributable to both coin and noncoin calls. CCI, however, discounts the telephone bill costs ($0.02 per call) and maintenance and collection costs ($0.01 per call) to deduct local measured usage charge and the costs associated with dial around collection.[211]

79. *Payphone Lines.* APCC states that local exchange line charges represent a small differential between coin and noncoin calls—on average, about 3 cents per call.[212] AT&T argues that tariffed screening and blocking service from the LECs as well as other reasonable expenses such as touch tone and 911 charges should be included in the cost of a call when computing the appropriate amount of per-call compensation.[213] CompTel argues that the line charge should be no more than $0.046 per call.[214] CWI contends that basic phone line plus usage charges, if any, for subscriber 800 and access code calls should be included in computing per-call compensation.[215]

80. Several of the IXCs contend that the costs associated with terminating local calls should not be used to compute per-call compensation.[216] CompTel argues that per-minute usage charges, if any, imposed by a LEC for originating access code or subscriber 800 calls are appropriate.[217] PageNet argues that line charges should not be included because non-PSP carriers already pay the LEC for the use of the payphone line through originating access charges.[218]

81. Peoples argues that line charges are attributable to coin and noncoin calls. Peoples argues that there is a minimum fixed line charge, and that in some states, there is an additional usage charge.[224] Peoples further argues, however, that as more states require fixed charges, there will be no difference between line charges for coin and noncoin calls.[225]

82. The Coalition contends that the Commission should not impose an offset for the local usage charge because in many cases payphone lines are flat-rated and PSPs do not recover termination or local usage charges. The Coalition contends, however, that if there is an offset, it should not be greater than $0.02 per call, which reflects the average local termination cost across all Coalition members.[226] CCI does not include local usage charges in calculating per call compensation amount.[227]

83. *Coin/Noncoin Collections.* The Coalition contends that the cost of coin collection, counting, and related equipment accounts for approximately $0.02 of the total cost of a local coin, but argues that this rate may be inflated because it allocates coin collection costs among coin calls based on coin volumes, not the number of coins deposited.[228] APCC argues that the differences between coin and noncoin calls in the area of coin collection are limited because coin collection is generally combined with general maintenance visits to the payphone, about $0.03. APCC further argues that coinless collection costs are likely to increase and may actually be $0.05–$0.06, thus higher than coin calls.[229] Peoples contends that coinless collection costs are greater than coin call collection costs, and further that in the past six months, coin related maintenance accounted for only 38% of all maintenance visits.[230] Peoples estimates that coin collection related costs are approximately $0.03 per call, and that coin collection costs are slightly lower than the cost involved in collecting for noncoin compensation.[231] Peoples contends that dial around collection costs are approximately $0.05–$0.06 per call.[232] CCI argues that it does not include coin collection costs of dial around calls in computing the appropriate amount of per-call

[203] APCC Reply at 11.

[204] TEI Comments at 10.

[205] The comments on commissions and billing/bad debt cost components are discussed *supra* at para. 62 and 56, respectively.

[206] CWI Comments at 8.

[207] MCI Comments at 3; RCN Comments at 4 (arguing that this cost is unique to the local coin rate and should be subtracted from a true rate that PSPs would provide as a deregulated local coin service on a nationwide basis). CompTel Comments at 13; CompTel Reply at 8 (CompTel argues that data is not available specifically for maintenance costs, but the cost for maintenance less coin capability is about $0.029 per call, thus the maximum incremental costs would be approximately between $0.01 to $0.02 per call); LCI Comments at 5–6 (requesting that the Commission adopt a default rate based on marginal costs and stating that costs associated with installing and maintaining a payphone should not be considered when determining per-call compensation).

[208] PageNet Comments at 14.

[209] Teleport Comments at 4.

[210] APCC Comments at 11(further stating that payphone equipment costs which include coin and coinless calling capabilities must be incurred by coin and noncoin calls); APCC Reply at 12.

[211] CCI Comments at 9.

[212] APCC Comments at 13.

[213] AT&T Comments at 9; CompTel Reply at 11, 14 (stating that some PSPs' basic payphone line charges include line cost categories such as network costs, which should not be included).

[214] CompTel Reply at 11, 14.

[215] CWI Comments at 8 (arguing that these costs should be considered proportionately based on relative usage for access code and subscriber 800 calls).

[216] *See, e.g.,* CWI Comments at 9; LCI Comments at 7; MCI Comments at 3; Sprint Reply at 6; Excel Comments at 3 (also arguing that originating access should not be included in the per-call compensation amount). *See* AT&T Comments at 9 (stating that local usage charges should not be included in the cost of a noncoin call).

[217] CompTel Comments at 13; CompTel Reply at 8 (stating that it does not object to applying the average per-call usage charge in areas where usage is employed, about $0.02–$0.03 per call, citing APCC Comments at 13 and Coalition Comments at 16).

[218] PageNet Reply at 20.

[224] Peoples Comments at 11–12 (arguing that at a minimum 50% of the line charge is fixed and that the variable portion that would be related to coin calls only is less than $0.04 per call).

[225] *Id.* at 12.

[226] Coalition Comments at 14–17.

[227] CCI Comments at 9.

[228] Coalition Comments at 16.

[229] APCC Comments at 14–15 (estimating the costs of dial-around compensation to be about 5–6 cents per call).

[230] Peoples Comments at 12–13.

[231] *Id.* at 13.

[232] Peoples Reply at 8.

compensation,G5233 but argues, however, that the costs associated with noncoin calls may increase due to additional expenses for collecting and auditing such compensation.[234]

84. CPI and CompTel contend that PSPs experience lower costs for subscriber 800 and access code calls than for coin calls because it is more costly to maintain a coin phone than a coinless phone.[235] AT&T, CWI, Excel, Frontier, MCI, PageNet, RCN, and ITA state that coin collection costs should not be included in the rate of per-call compensation.[236] TEI states that some service costs can be deducted when determining the rate for a noncoin call.

85. Teleport contends that costs associated with coin calls—collection, maintenance, and cost of transporting a call—on a per call basis are de minimis, and further that the opportunity costs associated with noncoin calls offset the de minimis difference in cost. TEI argues that the Commission should include a cost for the time value of money used in collecting the compensation should the Commission not prescribe collection tools for the PSP, and further, suggests that the Commission impose a stated interest rate on late payers of per-call compensation.[237]

86. *ANI ii.* APCC contends that the Commission should not explicitly rule that such charges incurred in restructuring the LEC networks to provide a unique screening digit for dumb payphone lines may be assessed on PSPs. However, APCC contends, if LECs are allowed to assess such charges on PSPs, then PSPs are entitled to recover those charges from IXCs dial-around compensation as part of the cost of originating dial-around calls.[238] The Coalition contends that requiring PSPs to pay LEC tariffs for ANI ii digits would add $0.05 to $0.08 to the per call rate, and Peoples supports attributing this cost to subscriber 800 and access code calls.[239] AT&T, Excel, Sprint, and GCI argue that the PSPs are not entitled to recover any costs for Flex ANI.[240] Excel and RCN state that IXCs should not be required to pay for ANI information provided by the PSPs, because the PSPs are the beneficiary of the information.[241]

87. *Depreciation/ Overhead.* CWI, PageNet, and CompTel contend that per-call compensation should not include depreciation costs or interest.[242] LCI, CompTel, and CWI argue that administrative and overhead costs are not attributable to noncoin calls.[243]

88. CCI and TEI argue that overhead, depreciation, amortization, and interest are attributable to coin and noncoin calls.[244] Peoples contends that overhead costs are attributable to all calls made from payphones, and argues that the IXCs do not justify why such costs should not be included.[245]

89. *Other.* In its estimate, AT&T included an 11.25 percent interest on capital factor, maintenance/warehouse/part costs and added averaged costs for the basic line and other related charges.[246] AT&T admits that some costs such as overhead, general and administrative expenses and taxes are appropriate in the computation of the cost of a noncoin call. According to AT&T, these costs are approximately $0.012 per call.[247] CCI includes taxes and the return on invested capital in the calculation of the costs of the per-call rate.[248]

90. CPI contends that subscriber 800 and access code calls are generally shorter in duration than coin calls. Therefore, the longer duration of local calls could allow for opportunity costs since few local calls displace shorter long distance calls.[249] TRA contends that per-call rates should not include embedded or opportunity costs.[250] Excel argues that coin rating costs should not be included in determining per-call compensation.

2. *Discussion*

91. As discussed above, we conclude in this order that an adjusted market-based local coin rate is the appropriate surrogate for the default per-call rate for subscriber 800 and access code calls. In this section, we explain our reasons for rejecting the proposals of various parties that we derive a default per-call rate for such calls based on cost estimates submitted in the record of this proceeding.

a. *Problems with the Proposed Methodologies for Deriving Payphone Compensation.*

92. A number of commenters, notably the IXCs, argue that the Commission should use the marginal cost of originating a payphone call as the basis for compensating PSPs.[251] Most of the parties, however, estimate marginal costs based on the incremental cost of an individual coinless call. Thus, as the Coalition explains, setting the rate at marginal or incremental costs means that joint and common costs could not be recovered.[252] We conclude that the use of a purely incremental cost standard for each type of call could leave PSPs without fair compensation for payphone calls, because such a standard would not permit the PSP to recover a reasonable share of the joint and common costs associated with those calls.[253] We also reject, for similar reasons, suggestions by commenters that we use local coin rates currently in place as a surrogate for per-call compensation. As we stated in the *NPRM*, "local coin rates in some jurisdictions may not cover the marginal [incremental] cost of the service."[254] Therefore, basing the per-call compensation amount on current local coin rates, which are frequently

[233] CCI Comments at 6–8.

[234] *Id.* at 2, 10.

[235] CPI Comments at 5 (arguing that only a keypad capable of originating dialing codes and electronics to identify the phone is needed and that PSPs do not incur costs of visiting a payphone and collecting and handling coins for subscriber 800 and access code calls); CompTel Reply at 11, 13. CompTel notes that Peoples argues a coin phone costs $41.66 per month to operate, but a coinless phone (as reported by AT&T) costs only $25.10 per month, and argues that coin phones are more costly, because a coin phone requires more frequent service and coin collection visits, and additional equipment that can be broken or vandalized. CompTel further argues that Peoples' cost figures for maintenance should be reduced by at least 50%. Comptel Reply, *supra.*

[236] *See* AT&T Comments at 9; CWI Comments at 9; MCI Comments at 3; PageNet Comments at 14 (arguing that the majority of features and functions as well as maintenance and repairs provisions of payphones are related to the acceptance and handling of coins, and that such costs are not properly attributable to subscriber 800 and access code calls); PageNet Reply at 19. *See also* Frontier Comments at 7–8 (stating that $0.043 is attributable to coin collection costs); ITA Comments at 6–7 (stating that in the *Report and Order,* at para. 44, the Commission estimated the cost of coin collection to be $0.02 per call); RCN Comments at 3 (stating that the PSP does not incur coin collection costs when originating a subscriber 800 or access code call, and therefore, the default rate of $0.35 must be reduced).

[237] TEI Reply at 6.

[238] APCC Reply at 23.

[239] Coalition Comments at 18; Peoples Reply at 8.

[240] AT&T Reply at 27–28; Excel Reply at 5; GCI Reply at 3; Sprint Reply at 8–10.

[241] Excel Reply at 5; RCN Reply at 5.

[242] CWI Reply at 11; CompTel Reply at 11, 14 (stating, however, that if these costs are included, then the cost per call should be only $0.011).

[243] LCI Comments at 8; CWI Comments at 9, n.7; CWI Reply at 9; CompTel Comments at 14.

[244] CCI Comments at 10. CCI attributes $0.04 to overhead, $0.03 to depreciation, $0.02 to amortization, and $0.02 to interest. CCI notes that these costs relate only to their payphones, but reflect the payphone industry. *See id.*

[245] Peoples Reply at 10.

[246] AT&T Comments at 10.

[247] AT&T Reply at 14.

[248] CCI Comments at 10.

[249] CPI Comments at 6.

[250] TRA Comments at 19.

[251] *See* CWI Comments at 5; Comptel Comments at 10; LCI Comments at 5; Sprint Comments at 3–4.

[252] Coalition Comments at 28 n.16.

[253] *Cf.* Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order,* 61 FR 45476 (August 29, 1996); 11 FCC Rcd 15,499,15844–15856 (1996) ("*Local Competition Order*") (describing total element long-run incremental cost methodology for pricing interconnection and unbundled network elements).

[254] *NPRM* at para. 22 n.64.

subsidized by state regulators, would not fairly compensate the PSPs. In the *Payphone Orders*, we rejected the use of the $0.12 per-call compensation amount the Commission first discussed in its 1991 *Notice of Proposed Rulemaking* in the access code call compensation proceeding. We noted that we never adopted the $0.12 per-call amount, and that rate was effectively rejected when the Commission adopted a $6 flat rate per payphone per month based on a per-call rate for access code calls of $0.40.[255]

93. We determined in the *Order on Reconsideration* that reliance on cost studies, *in general*, could reduce the revenue recovered by the PSPs, and therefore, might reduce the number of payphones deployed.[256] We reaffirm that decision here. Adopting a per-call compensation scheme that did not "promote the widespread deployment of payphone services" would be inconsistent with Congressional intent.[257]

94. We also affirm our conclusion in the *Report and Order* that the cost-based TELRIC standard that the Commission relied upon in the local competition proceeding is inapplicable here, because the payphone industry is not a bottleneck facility that is subject to regulation at virtually all levels.[258] The TELRIC pricing principles adopted in the local competition proceeding were designed to reflect the long run cost of an element or physical facility. Since there are relatively few common costs between separate facilities, TELRIC compensation will compensate a carrier for virtually all costs associated with providing (the services of) that facility. With the addition of a share of the relatively small common costs, the firm will be able to cover its total costs.[259]

95. Additionally, we conclude that Congress' use of the phrase "* * * payphone service providers are fairly compensated for each and every completed interstate and intrastate call * * *"[260] is a different standard than the cost-based standard articulated for the compensation for interconnection and unbundled elements. We conclude that the PSP will be providing a competitive service (payphone use) and should therefore receive compensation equal to the market-determined rate for providing this service. In the *Local Competition Order*, we concluded that the cost-based interconnection standard, on the other hand, compensates a carrier for the long run incremental cost of providing interconnection or the long run incremental cost of providing an unbundled element plus a reasonable share of the common costs. Because the local exchange is not yet competitive, we could not rely on the market to set competitive rates for unbundled elements. In the case of payphones, the presence of multiple PSPs already operating in many markets, and the structure of the industry that allows relatively easy entry and exit, leads us to conclude that we can rely on market forces to provide for efficient pricing of these services in the near future.

96. In this proceeding commenters also argue that we should apply a TSLRIC cost standard to only a subset of services (*i.e.*, subscriber 800 and access code calls) provided by a facility (payphone). In general, when several services are provided by the same facility, the incremental cost of providing any one service is very small and the common cost among these services is very large. Thus, a TSLRIC standard under which a carrier is compensated only for the incremental cost of each service individually without a reasonable allocation of common costs, as suggested by commenters, would not allow the carrier to recover the total costs of providing all of the services. A TSLRIC standard that yields prices that recover a reasonable share of joint and common costs would require the difficult allocation of those (large) costs among the different types of calls made from payphones.

97. We also reject suggestions that use of a market-based compensation standard, in lieu of one that is cost-based, will overcompensate PSPs. The marketplace will ensure, over time, that PSPs are not overcompensated. Carriers have significant leverage within the marketplace to negotiate for lower per-call compensation amounts, regardless of the local coin rate at particular payphones, and to block subscriber 800 calls from payphones when the associated compensation amounts are not agreeable to the carrier.

98. Previously, in the access code call compensation proceeding, we relied upon AT&T 0+ commissions as a measure of the fair value of the service provided by independent payphone providers when they originate an interstate call. Data presented above, however, suggest that the 0+ commission rate exceeds the market rate for local coin calls while the costs of access code and subscriber 800 calls are less than the costs of local coin calls. Furthermore, commissions may include compensation for factors other than the use of the payphone, such as a PSP's promotion of the Operator Service Provider (OSP) through placards on the payphone. Accordingly, we conclude that a market rate based on 0+ commissions would result in a default rate that overcompensates payphone providers for access code and subscriber 800 calls. Moreover, our approach is based on the costs of a low traffic location that does not support commission payments.

b. *Analysis of Record Evidence of Payphone Costs*

99. Although we reject suggestions that we set the default rate based on the long run costs of providing service, our analysis of the record evidence indicates that an estimate of the long run costs of providing access code and subscriber 800 service, including an equal per call share of joint and common costs,[261] is not significantly less than the market-based rate determined above. Over time, the marginal cost associated with new entry (adding a payphone) may be an important determinant of the market rate for access compensation. For comparison, we estimated costs of the installation and operation of a payphone at a low traffic location; that is, at a location that would be expected to generate sufficient calls so that the payphone provider could earn only a normal return on investment and could not pay commissions to the premises owner.

100. We calculated a rate for access code and subscriber 800 calls by estimating the cost of a typical multi-use payphone that is capable of being

[255] *OSP Second Report and Order*, 57 FR 21038 (August 29, 1992); 7 FCC Rcd at 3257.

[256] *Order on Reconsideration*, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,266, para. 66.

[257] *See infra* para. 119.

[258] *See Order on Reconsideration*, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,240–43, 21,268, paras. 11–19, 70 (noting that the payphone industry is likely to become increasingly competitive). *See also* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First *Report and Order*, 61 FR 45476 (August 29, 1996); 11 FCC Rcd 15,499 (1996), *Order on Reconsideration*, 61 FR 52706 (October 8, 1996); 11 FCC Rcd 13,042 (1996), *Second Order on Reconsideration*, 61 FR 66931 (December 19, 1996); 11 FCC Rcd 19,738 (1996), *further recon pending; aff'd in part and vacated in part sub nom., CompTel v. FCC*, 11 F.3d 1068 (8th Cir. 1997), *aff'd in part and vacated in part sub nom. Iowa Utilities Bd. v. FCC* and consolidated cases, 120 F.3d 753 (8th Cir. 1997).

[259] We also note that it would be particularly burdensome to impose a TELRIC-like costing standard on independent payphone providers, who have not had previous experience with any costing systems.

[260] 47 U.S.C. § 276(b)(1)(A).

[261] As explained above, market forces in a competitive market (including both marginal cost and demand differences) determine how joint and common costs are recovered from different services. We determined, however, that we lacked adequate elasticity information to determine whether access code and subscriber 800 calls would recoup more or less joint and common costs per call than would local coin service.

placed outdoors. We then subtracted all costs directly attributable to coin and access code calls to determine the amount of joint and common costs associated with a multi-use phone. We then determined the amount of joint and common costs attributable to each call by dividing these costs by an estimate of the number of calls placed at a location where a payphone will earn a normal return on investment. Three parties, Peoples, CCI and AT&T provided relatively consistent cost data that could be used to estimate joint and common costs. The following sub-sections summarize our category-by-category estimation of costs.

101. *Maintenance.* Data presented by Peoples indicates maintenance cost of 4.8 cents per call.[262] Sprint suggests 3.6 cents per call.[263] CCI data suggest 6.6 cents per call[264] and Robinson's data for AT&T suggest a total of between 2.5 and 4.0 cents per call.[265] Based on the information presented by the parties,[266] we estimate that joint and common maintenance costs at a low traffic location would amount to between 4.0 and 5.0 cents per call.[267]

102. *Line costs.* Data for Peoples suggests line costs of 5.9 cents per call.[268] Data for CCI suggests line costs of 7.9 cents per call.[269] Sprint suggest 8.0 cents per call.[270] Robinson's study suggests line costs of 6.5 cents per call.[271] We estimate that joint and common line costs at a low traffic location would amount to between 6.5 and 7.5 cents per call.[272]

103. *Sales, General & Administrative.* Data for Peoples suggests SG&A of 5.4 cents per call.[273] Data for CCI indicates SG&A costs of 5.3 cents per call.[274] Sprint suggests 1.57 for SG&A.[275] Sprint, as a LEC and an IXC, has a significantly different organizational structure and payphone base from that of independent payphone providers. Accordingly, little weight was given to Sprint data for SG&A. Robinson did not develop an independent estimate of SG&A.[276] Accordingly, we use the estimates based on data for Peoples and CCI as the high and low estimates, respectively. We conclude that joint and common SG&A at a low traffic location would amount to between 5.3 and 5.4 cents per call.

104. *Capital and Equipments Costs.* Most parties recognize that payphone providers should have an opportunity to recover depreciation costs and earn a return on investment. Joint and common investments for a new payphone should include not only the costs of purchasing and installing a payphone, but also a normal increase in leasehold improvements, spare parts and inventory, and cash working capital.[277]

105. Robinson estimated the average outlay associated with adding a new smart coin telephone as $1,050 for the instrument,[278] $300 for a pedestal and enclosure, $395 for installation of the telephone, pedestal and enclosure, and $150 in local exchange carrier connection charges, for a total investment of $1,895.[279] Some PSPs claim that Robinson underestimated pedestal and enclosure and related installation charges.[280] The Robinson estimates do not include other investments, such as maintenance vehicles and office equipment, needed to support a payphone business. Several PSPs estimated average capital costs per call, but did not provide sufficient detail to allow these estimates to be used to estimate the direct capital costs of adding a payphone.

106. We estimate joint and common equipment costs by: (a) estimating the amount of assets that are likely to be added when a payphone is added; (b) subtracting the amount attributable to the coin mechanism; (c) calculating a monthly cost for the balance; and (d) dividing the monthly cost per payphone by the low traffic location number of calls. Peoples 10K data indicate that Peoples depreciable net investment per payphone amounted to $1,617 as of December 1996.[281] CCI's 10K data indicate that CCI's depreciable net assets per payphone amounted to $1,704

[262] Peoples estimated total maintenance and coin collection costs per month of $41.66, 38% of which was for coin collection costs. Peoples Comments at 10–12. Dividing the maintenance portion by the low traffic number of calls (542) gives the estimate of 4.8 cents per call. This estimate probably includes some incremental maintenance caused by coins being deposited in Peoples payphones.

[263] $19.62 for maintenance divided by 542 calls. Sprint Reply, Exhibit 1 at 2.

[264] Based on an average call volume of 720 calls, CCI estimated that it spent $0.05 per call for maintenance, exclusive of any costs solely due to coin collection and maintenance. CCI Comments at 9. We concluded above, however that this figure was probably biased high. Multiplying by 720 calls and dividing by the low traffic number of calls (542) gives an estimate of 6.6 cents per call.

[265] Robinson estimates that the monthly cost of maintenance plus repair parts for a coinless telephone is $13.35 and for a smart coin telephone is $21.70. AT&T Comments, Robinson at 13. Divided by 542, the low traffic location number of calls, yields estimated costs of 2.5 and 4.0 cents per call. Some of the increased cost of a coin telephone would be attributable to the coin mechanism.

[266] Teleport filed a return on investment analysis partially based on hypothetical information from a study by John S. Bain (Teleport Ex. Parte). This analysis is not sufficient to support a direct estimation of either the costs directly attributable to coin calls or total joint and common costs.

[267] The Sprint data may not be representative of costs that would be incurred by independent pay telephone providers. We select 4.0 cents as the low estimate of maintenance costs per call by selecting the highest value based on AT&T data. We select a figure between the Peoples and the CCI based estimates, 5.0 cents, as the high estimate. This amount is below the average of the estimates in recognition of possible biases in the Peoples and CCI estimates.

[268] Peoples filed $59.54 of total line charges including message charges per month of $27.69. Peoples Comments at 10–12. The difference, $31.85, represents joint and common line costs. This amount, divided by the low traffic number of calls (542) equals 5.9 cents per call.

[269] CCI estimates joint and common line costs of $0.06 per call, compared with $0.08 per call for coin calls, based on 720 calls per payphone per month. CCI Comments at 9. Multiplying $0.06 times 720 calls and dividing by the low traffic number of calls (542) equals 7.9 cents per call.

[270] $43.22 for line charges divided by 542 calls. Sprint Reply, Exhibit 1 at 2.

[271] AT&T estimated a monthly line charge for a smart coin telephone of $27.73, a subscriber line charge of $5.83, and other line costs of $1.84 for a total cost of $35.40. *See* AT&T Comments, Robinson at 12. This amount, divided by the number of low traffic number of calls (542) equals 6.5 cents per call.

[272] As explained above, different line costs for different PSPs may simply reflect the fact that they have payphones located in different areas. Sprint, for example, may have higher joint and common line costs than others that filed data because Sprint cannot take advantage of potentially lower cost measured service options. We estimated a likely range for average PSPs by adjusting the high and low estimates of the carriers by approximately half a cent.

[273] Peoples estimated sales and general administrative expenses of $25.27 per line as well as billing costs and bad debts of $4.02 per line per month. *See* Peoples Comments at 10. We do not have sufficient information to estimate a higher or lower billing and bad debt cost for access code and consumer 800 calls compared with other payphone calls. The total, $29.29, divided by the low traffic number of calls (542) equals 5.4 cents per call.

[274] CCI estimated expenses of $0.04 per minute based on 720 calls per telephone. See CCI Comments at 10. Multiplying by 720 calls and dividing by the low traffic number of calls (542) equals 5.3 cents per call.

[275] ($2.78 sales salaries + $4.31 sales commissions + $1.42 G&A) divided by 542 calls. Sprint Reply, Exhibit 1 at 2.

[276] Robinson accepts CCI and Peoples estimate of a total of $0.04 per call for SG&A. See AT&T Comments, Robinson at 6. He considers $0.02 of this to be attributable to coinless calls, implying that the total would be higher than $0.04 per call for coin calls. Robinson, however, does not adequately explain why so much of SG&A should be solely attributable to coin operations and not treated as joint and common.

[277] Some capital items, such as intangible assets and good will, would not need to be increased if the company added a payphone at a low traffic location.

[278] The Coalition notes that some coinless telephones cost significantly more than the basic coinless sets used in the Robinson study. See Coalition Reply at 27. The Coalition filed a study by Carl R. Geppert estimating that the AT&T Public Phone 2000, which incorporates a nine-inch color monitor, a dataport for laptop or fax communications, built in keyboards for access to e-mail and on-line weather services, cost between $2000 and $4000. See Coalition Ex. Parte, Oct. 1, 1997 at 3. This information, however, does not bear on how much of the costs of a new smart coin telephone are due to the coin mechanism. The typical new smart coin telephone does not incorporate these features.

[279] AT&T Comments, Robinson at 5.

[280] APCC Reply at 14; Coalition Reply at 29.

[281] $65.067 million of net plant and property divided by 40,239 payphones.

as of December 1996.[282] Firms, however, add new assets rather than depreciated assets. Adjusting for depreciation, we estimate new depreciable investment per payphone of $3,234 for Peoples[283] and $2,799 for CCI.[284] As explained above, we impute $710 of new investment per payphone directly to coin calls. Accordingly, we calculate new joint and common investment per payphone of $2,524 and $2,089, respectively. These amounts of new investment would result in monthly investment costs of $43.94 and $37.07, respectively.[285] The carriers would also expect to earn a return on some other assets on the books—pre-paid expenses and inventory. These items add $1.79[286] and $2.01[287] in investment costs per month, respectively. Summing the investment costs and dividing the low traffic location number of calls results in estimates of total investment costs of 7.2 cents per call and 8.4 cents per call, which we use as the likely range.

107. *Other Costs.* We concluded above that it was reasonable to include $0.01 in adjusting the market rate for a local coin call to account for the cost of ANI ii deployment by the LECs, passed through to PSPs in the form of higher access line charges, and include that figure in our analysis here. We also concluded that carriers would receive access code and consumer 800 access compensation approximately 3 months later than they would receive coin revenues, and thus included interest, based on an 11.25% annual cost of capital the long run cost estimate. We use that same figure in our analysis here. In addition, we explained earlier the positions regarding including commissions as a cost-factor, and thus conclude that those costs are excluded properly from a cost-based analysis.[288–289]

108. *Total Long Run Cost.* The preceding analysis suggests that total long run cost of access code and consumer 800 calls would range from 24.7 cents per call (based on a sum of the low estimates) to 28.1 cents per call (based on the sum of the high estimates).

	Low estimate	High estimate
Maintenance	4.0	5.0
Line costs	6.5	7.5
SG&A	5.3	5.4
Capital costs	7.2	8.4
ANI ii	1.0	1.0
Interest	.7	.8
Total	24.7	28.1

109. *Sprint's Motion.* On September 16, 1997, Sprint filed a Motion asking that the Commission require Bell Atlantic to submit a copy of the NET cost study filed before the Massachusetts DPU and supporting papers to the Commission and to all parties of record in this proceeding. On September 26, 1997, Bell Atlantic filed an opposition to Sprint's motion to require production of a confidential cost study and conditional cross-motion for production of payphone cost data from Sprint and AT&T. Bell Atlantic argues that Sprint's motion should be rejected because: (1) The study was prepared for the Massachusetts DPU and Sprint should seek relief from that agency; (2) there is no justification for requiring the production of the study because the study examines incremental costs, which, Bell Atlantic argues, the Commission has rejected; and (3) the information is confidential.

110. We deny Sprint's motion and decline to require Bell Atlantic to submit a copy of NET's cost analysis. We are not persuaded that the NET cost study, which Sprint indicates was submitted to the Massachusetts DPU on a confidential basis, is necessary for us to reach a decision in this proceeding. Furthermore, we note that there are differences of opinion regarding the NET methodology. The NET study as well as other confidential studies filed in other states are not before us. We further note that as Bell Atlantic states, the information is confidential, and therefore, should we require Bell Atlantic to make such a filing, Bell Atlantic likely would require that we treat the study as confidential. Were we to agree, the information would not be available to the parties. We note, moreover, information on the record provides deregulated coin rates for several states. Because we are denying Sprint's motion, we need not address Bell Atlantic's conditional motion for production of documents.

D. Per-Call Compensation Rate

111. In this section, we conclude that the default market-based per-call rate for subscriber 800 and access code calls is $0.284, which reasonably accounts for the payphone costs that are incurred solely in connection with local coin calls and costs that are specific to access code and subscriber 800 calls.

1. *Comments*

112. Parties filed comments that varied considerably, primarily depending on whether they relied on a market-based or derived rate methodology. AT&T and ARCH argue that the compensation rate should be $0.11 per-call, based on the costs of providing a subscriber 800 or access code call.[290] AT&T arrives at this rate by estimating a cost of $76.85 per month for a payphone divided by an average of 700 calls per phone per month.[291] AT&T contends that this rate is consistent with NYNEX's local coin rate of $0.167. Alternatively, AT&T and MCI argue that if the Commission adopts a rate based on an offset from the local rate, then the offset should be at least 50%.[292] AT&T further argues that even using a adjusted market approach as suggested by the Coalition results in payphone compensation in the amount of $0.1067 cents per call, which is in line with the rate that AT&T has calculated for coinless calls based on its estimated monthly costs of a payphone.[293] AT&T further states that even if adjustments have to be made for depreciation, overhead, general and administrative expenses and taxes, the per-call cost for coinless calls would only increase to 12.2 cents per call.[294] AT&T maintains that $0.35 is not the appropriate

[282] $73.263 million of gross property, plant and equipment plus $1.595 of gross leasehold improvements, less $29.922 of accumulated depreciation and amortization, divided by 26,377 payphones.

[283] Based on an assumed ratio of depreciation reserve to net plant of 50% ($1,615 net plant and equipment per phone divided by .5).

[284] CCI's 10K depreciation reserve is 40% of gross depreciable net investment. The new investment per added payphone is $1,649 average net plant and equipment per payphone, divided by 60%, plus $60 average leasehold improvements per payphone. (Leasehold improvements are a joint and common cost for all payphone. The addition of one payphone would not necessarily cause any specific investment but rather, would result in a general increase in the size of the business. Thus, CCI would add an average amount of net leasehold improvements as opposed to the specific amount of investment for the instrument, the pedestal, etc.).

[285] Calculated as equal monthly payments to depreciate the investment over 10 years and earn a return of 11.25% on net investment, allowing for federal Income taxes a the 34% statutory rate.

[286] Peoples reports $2.665 million of pre-paid expenses and $2.412 million of inventory. Peoples 10K at 39.

[287] CCI's 10K shows prepaid expenses of $0.708 million and inventory and uninstalled equipment of $1.438 million. See CCI 10K at 44.

[288] *See supra* paras. 59, 62.

[290] AT&T Comments at 2; AT&T Reply at 2; Arch Reply at 9. AT&T and ARCH state that this rate is based on the actual costs of an efficient PSP to originate access code and subscriber 800 calls. Note, however, that the Coalition challenges this estimate, arguing that AT&T's cost study merely reflects a hypothetical, not real, PSP, and links the costs to a coinless, not coin phone. The Coalition argues that adjusting AT&T's rate to reflect proper data would yield a rate of approximately $0.41 per-call. Thus, if the Commission relies on costs, it should rely on the costs of an actual payphone. Coalition Reply at 31.

[291] AT&T Comments at 10–11; AT&T Reply at 14.

[292] AT&T Comments at 13; MCI Reply at 3.

[293] AT&T Reply at 13.

[294] *Id.* at 14.

unregulated coin rate because it was based on a small and unrepresentative sample of rural states, and the cost in those states could be higher than in other areas.[295] The Commission ignored the deregulated rate in other rural states, where the rate is $0.25, which, AT&T asserts, also is the dominant rate where the majority of payphones are located.[296] Borden suggests a rate of approximately $0.133 per call, and Champion suggests a rate between $0.08 and $0.11.

113. CompTel argues that a fair compensation amount based on incremental costs is between $0.03 to $0.05 per call,[297] and that even under a direct cost approach, compensation should not exceed $0.10 per call.[298] Frontier argues that a cost-based rate should be approximately $0.10 per call,[299] but no higher than $0.11 per call.[300] ITA argues that the rate should be between $0.08 and $0.15 per call.[301] MCI argues that the per-call rate for access code calls is $0.083 per call, and that the number for subscriber 800 calls should be even lower.[302]

114. MIDCOM states that the rate should be $0.057.[303] Sprint argues that on a fully allocated approach to costs, using an efficient bellwether provider, the default rate per call should be $0.06.[304] TRA argues that the 35 cent rate is too high.[305] Excel argues that the Court decision demonstrates that we cannot set the rate for subscriber 800 and access code calls at the same level as the local coin rate, and thus the Commission must reduce the $0.35 rate.[306]

115. The Coalition states that, to truly reflect the market, the local coin rate needs to be adjusted from $0.35 upward to $0.42 or $0.43 per call.[307] In a fully realized market, the Coalition states, noncoin calls would be carrying a greater portion of the payphone costs than coin calls, and therefore should be priced at a higher rate.[308] APCC alleges that the average per-call local coin rate is $0.41, not $0.35.[309] IPTA and TEI state that the record supports a compensation level of no less than $0.35 per call.[310] CCI requests that the Commission set the per-call compensation rate at $0.35.[311]

116. The majority of the IXCs argue that there should be one national rate,[312] because a varying rate would be nearly impossible to administer, and could increase the costs to carrier-payers of administering per-call compensation.[313] Furthermore, CWI argues that because not all carriers can block calls, the Commission should not create a situation where carriers must block calls because they are unaware of the rate to be charged.[314] MCI argues that if the Commission does not adopt one uniform rate, then it should set parameters such as notifying carriers of the coin rate in advance and changing the coin rate not more than once per year.[315] APCC argues that the Commission should not adopt a uniform compensation rate, and although the costs associated with a non-uniform rate may be higher, the benefits of directly market-based compensation are worth the extra costs.[316]

2. *Discussion*

117. We conclude from our analysis in Section B, that the market-based rate for access code and subscriber 800 calls, adjusted for cost differences is $0.284.[317] We further conclude that the market-based rate we establish herein as a default rate for per-call compensation promotes the goals of Section 276 of the Act, fair compensation, the deployment of payphones, and competition, and is a rate that is reasonably related to the market-based local coin rate. As discussed below, we conclude that the $0.284 default rate for per-call compensation rate, absent negotiations, should be in effect for two years to enable LECs, PSPs and IXCs additional time to transition efficiently and without disruptions to the deregulated payphone market structure created in the *Payphone Orders*.[318] Furthermore, we conclude that after the two year per-call compensation rate period, "fair compensation" for access code and subscriber 800 calls pursuant to Section 276 and an analysis of the record is the deregulated market rate for the local coin call adjusted for costs as discussed herein. Accordingly, the default rate for the first two years of per-call compensation is $0.284; after the first two years, the default rate is the market-based local coin rate minus $0.066 per call. We conclude that the default per-call rate falls within a zone of reasonableness that will provide fair compensation for subscriber 800 and access code calls as required by Section 276, while allowing the market to

[295] *See id.* at 22–23; *see also* CFA Reply at 7; MIDCOM Comments at 5; RCN Comments at 4; TRA Comments at 21; Excel Reply at 9 (stating that the four states that have deregulated rates account for only two percent of the nation's payphones).

[296] *See, e.g.*, Excel Reply at 10 (stating that a Massachusetts proceeding determined that the rate there is $.25).

[297] CompTel Reply at i, 8.

[298] *Id.* at 14.

[299] Frontier Comments at 9.

[300] Frontier Reply at ii, 2 (arguing that a rate higher than $0.11 per call would harm consumers).

[301] ITA Comments at 7 (basing the upper number on the $0.17 rate identified for a local coin call by the Massachusetts DPU for NYNEX minus the cost of coin collection ($0.02) and further stating that the $0.35 rate results in increased cost of a typical prepaid phone card call by over fifty percent per call).

[302] MCI Comments at 3.

[303] MIDCOM Reply at 6. In its comments, MIDCOM argued that the rate should be between $0.067 to $0.25 per call. *Seest* MIDCOM Comments at 7.

[304] Sprint Reply at 4.

[305] TRA Comments at 21 (arguing that the costs associated with making a coinless call are significantly less than those associated with a coin call).

[306] Excel Comments at 2.

[307] Coalition Comments at 13–14.

[308] *Id.*

[309] APCC Comments at 15 (explaining that coinless calls generate additional costs such as ANI).

[310] *See IPTA* Reply at 5, 11; *see also* TEI Comments at 10; TEI Reply at 2 (arguing that a lower figure could result in the removal of payphones).

[311] CCI Comments at 2, 10 (arguing that total cost plus return on invested capital is $0.37 per call for a coin call, and $0.34 per call for a coinless call).

[312] *See, e.g.*, CWI Comments at 10–11; CWI Reply at i, 1, 12 (stating that the Commission should not start per-call compensation until thirty days after the release of an order on remand so that carriers will have ample time to recover per-call amount in their tariffed charges); LCI Comments at 8, n.14; MCI Comments at 5; RCN Comments at 4; Sprint Reply at 21; WorldCom Comments at 4 (stating that a national rate would enable IXCs to fulfill tracking and payment obligations and that this rate could be eligible for periodic adjustment based on changes in TSLRIC costs).

[313] CWI Reply at 12 (stating that it could cost carriers-payers perhaps up to 300 percent above the cost of administering a uniform compensation rate); AT&T Comments at ii, 16–17 (stating that a "floating" rate could cost carriers "hundreds of millions of dollars to track and block calls from excessively-priced payphones and would be virtually impossible, and extremely costly to administer."); MCI Comments at 5 (stating that it would be costly due to administrative costs, switch software upgrades, and call processing systems development); LCI Comments at 8–9 (stating that the Commission should establish a uniform, national compensation rate for access code and subscriber 800 calls and that a uniform rate will allow the necessary business certainty and will reduce call blocking due to a carrier's lack of information concerning the rate to be charged); Sprint Reply at 21 (arguing that there is no basis for a mechanism to periodically adjust the rate upward because if the Commission bases the rate on costs that include fixed costs of the PSPs, then as traffic volumes grow, unit costs should decline).

[314] CWI Comments at 10–11; CWI Reply at 12.

[315] MCI Comments at 5; MCI Reply at 12.

[316] APCC Reply at 32.

[317] The Commission has the authority to employ different methodologies and/or regulatory models to arrive at a particular rate. *See Permian Basin Area Rate Cases*, 390 U.S. 747, 767 (1968). We note that as discussed above, parties have argued for a range of from $0.03 to $0.63. While determining an appropriate rate, we have kept in mind that Congress specifically stated that "[c]arriers and customers that benefit from the availability of a payphone should pay for the service they receive when a payphone is used to place a call." House Report at 88. *See supra* paras. 23–28, 63.

[318] *See infra* para. 121.

develop, and PSPs who desire, to negotiate a different rate.[319]

118. In adopting an adjusted market-based rate approach, we note that the Commission has the authority to rely on market forces, and further, that "market predictions are within the institutional competence of the Commission." [320] In adopting this approach, we are confident that market forces will keep payphone prices at competitive levels, and that our default rate is in accordance with prevailing market conditions adjusted for costs. Courts have upheld rates established by regulatory agencies that lie within a "zone of reasonableness," [321] particularly, in the context of ratemaking. While we do not consider the development of the default rate established herein to be ratemaking, because market imperfections currently exist within the evolving competitive payphone market, we have set a default rate to ensure competition.[322]

119. As discussed above, in response to the claims of parties on the record that only a rate derived from cost data submitted in the record will provide a valid per-call rate, we have also performed an analysis of those data for purposes of comparison with the market-based per-call rate we establish in this order. In setting the default rate for per-call compensation at $0.284 based on our market-based analysis, we have also considered the results of our analysis of the record information concerning the long run costs of payphone service. We have calculated the long run costs per-call for a provider to install a payphone to be in the range of $0.247 per call to $0.281 cents per call.[323] An estimate compiled under this long run costs approach must be considered a lower bound when establishing a default rate. The rate derived in this manner, by definition, just covers the cost of installing and operating a payphone at a marginal location. As such, it will not encourage either the deployment of additional payphones or an incentive for IXCs to negotiate with PSPs. Such minimal incentives are contrary to the goals of promoting competition among payphone service providers and promoting the widespread deployment of payphone services. Accomplishing these goals requires that we ensure that the default rate, in addition to covering cost, provide sufficient incentives for PSPs to deploy additional payphones and tangible incentives for IXC and PSPs to negotiate. Thus, the default rate we adopt for subscriber 800 and access code calls based on the market-based local coin rate adjusted for costs differences is appropriately and reasonably at the high end of the range compiled from the long run cost analysis.

120. We deny requests that we should mandate a uniform and fixed per-call compensation rate for each compensable call. A fixed rate would not promote the statutory goals of Section 276, because it would not encourage negotiations between IXCs and PSPs. It is our expectation that IXCs and PSPs will build business relationships and create operating procedures to provide compensation in an efficient manner. Given that we have adopted a deregulatory approach in this order, we conclude that we should not establish those procedures. Under the approach we established in the *Report and Order*, (61 FR 52307 (October 7, 1996)) the market is allowed to set the compensation amount for calls originated by each payphone. The court did not vacate that part of the *Report and Order*. For market-based pricing to function effectively, it is not unreasonable that there be some variation in compensation amounts from location to location. We also decline to delay the effective date of this order as requested by CWI. As we discussed previously, we conclude that it is in the public interest to make this order effective immediately. [324]

121. In this order, we extend the per-call interim compensation period subject to a default rate established in the Payphone Orders for an additional year. Thus, the per-call compensation period during which the default rate is $0.284 begins on October 7, 1997, and ends on October 6, 1999. We established the interim compensation plan in the *Payphone Orders* in order to ease the transition to market-based rates. We stated that it was necessary to observe over time how the payphone marketplace would function in the absence of regulation. We noted that market imperfections had led us to establish a default rate. On this record, we conclude that additional time is required to ease the transition to market-based rates and that continuing the applicability of the default rate for an additional year is in the public interest. As we have summarized in this order, we have received comments from LECs, PSPs, and IXCs regarding the problems and issues they face in transitioning to the payphone market compensation structure we established in the *Payphone Orders*. For example, IXCs and their customers allege that after the first year of per-call compensation established in the *Payphone Orders*, when the default rate will be the deregulated coin rate adjusted for cost differences, PSPs will raise the coin rate in a manner that will raise substantially the per-call rate for access code and subscriber 800 calls. They indicate that their systems are not adequately prepared to respond to such situations. In addition, LECs have indicated problems in providing the payphone-specific coding digits required to respond to calls from payphones on a real-time basis for some payphones in their serving areas.

122. Although we conclude in this order that the marketplace, based on negotiations between IXCs and PSPs, is where compensation decisions should be determined and that the default rate after the per-call transition period should be the market-based local coin rate adjusted for cost difference, we believe that this two year per-call compensation period subject to the default rate is necessary to afford IXCs, PSPs and LECs the opportunity to adjust to and adequately prepare for the

[319] We note that the Illinois Commerce Commission adopted a rate of $0.30 for retail 1–800 calls (which are synonymous with access code calls) when it deregulated payphones. The Illinois proceeding raised many of the same concerns as those raised in this proceeding. *See* IPTA Comments, July 1, 1996, Appendix B, Order of the Illinois Commerce Commission, 92–0400 at 18–19, 24. We also note that the rate that AT&T negotiated with PSPs for access code calls was $0.25. The rate we adopt herein falls within the range of these rates. *See* AT&T Reply at 12–13.

[320] *FCC* v. *WNCN Listeners Guild*, 450 U.S. 582, 593, 596 (1981).

[321] *See, e.g., Noder* v. *FCC*, 520 F.2d 182 (D.C. Cir. 1975) (stating that there is a zone of reasonableness within which a rate will be upheld and that the Commission must identify the boundaries of such a zone); *Notional Cable Television* v. *Copyright Royalty Tribunal*, 724 F.2d 176 (D.C. Cir. 1983) (stating that rulings need not rest on precise mathematical calculations and that a ruling will be upheld if it lies within the zone of reasonableness); *Bell Atlontic Tel. Co.* v. FCC, 79 F.3d 1195, 1202 (D.C. Cir. 1996) (stating that the Commission is not required to include all data when determining a rate, and that the Commission has the authority to exclude suspicious data or statistical outliers).

[322] In *Illinois Public Telecomm.*, the court stated that "a market-based approach is as much a compensation scheme as a rate-setting approach. 117 F.3d at 563.

[323] In deriving a default per-call compensation rate based on the long run costs indicated in the record data, we do not adopt this approach on a going-forward basis but continue to rely instead on the market-based approach adjusted for cost differences. To do otherwise would lead to our continuing review of the costs associated with providing per-call compensation for subscriber 800 and access code calls and provide disincentives to PSPs and IXCs to negotiate market based rates for these services. Moreover, market-based rates lead to efficient allocation of resources and avoid the pitfalls of regulating rates for firms that use common facilities to produce both non-regulated and regulated services.

[324] *See supra* para. 3.

deregulatory market-based structure we adopted pursuant to Section 276.[325]

E. Other

1. *Comments*

123. *AirTouch Plan.* AirTouch suggests that the Commission explore a new method to resolve the compensation issue due to the wide divergence of views expressed in the replies, and its concern that call blocking options do not exist. AirTouch argues that the Commission should adopt a method that does not rely on call tracking or call blocking to place checks on the imposition of excessive charges by payphone service providers.[326] AirTouch proposes that the Commission adopt a unique 8XX approach that would be toll-free for long distance charges, but could be accessed from a payphone only if the caller deposits coins (presumably at a fraction of the local coin rate). PageNet and PCIA support AirTouch's unique 8XX approach and state that it merits further investigation.[327] PageMart argues that if the Commission does not adopt a caller-pays approach, then it should consider AirTouch's modified approach.[328] Several of the paging companies argue that they should pay less than other carriers due to the short duration of the calls used to initiate pages.[329]

124. *Reconsider Use of Caller Pays.* AirTouch, PageNet, PageMart, Arch, and PCIA argue that the Commission should adopt a caller-pays system, because such a system, they argue, is the only true surrogate for market-based compensation.[330] PCIA argues that the Commission should reconsider the caller-pays system because IXCs have a limited ability to block calls and thus have a check on excessive payphone rates.[331]

125. APCC contends that the paging industry's recommendation that the Commission should adopt a caller pays approach is without merit.[332] APCC contends that the information needed to block calls from PSPs that charge "too much" is located within a database, not the screening digits.[333] APCC contends that it is not necessary to implement this database until per-call compensation is tied to individual providers' prices in October 1998.[334]

126. *Call Blocking.* AirTouch reiterates its concern that call blocking options do not exist, and therefore suggests the proposal enumerated above, because the proposal does not rely on call tracking or call blocking to place checks on the imposition of excessive charges by payphone service providers.[335] AirTouch further states that paging companies should not have to pass through the $0.35 charge until targeted call blocking is available for payphone calls,[336] and PageMart contends that call blocking technology is an integral part of the development of a competitive PSP market.[337] MCI argues that Congress did not intend for carriers to have to block calls, and furthermore, carriers will not be able to selectively block calls until the third quarter of 1998.[338]

127. PageNet, PageMart, and PCIA contend that without call blocking capability, the 800 subscriber does not have any leverage to negotiate for lower rates for calls placed from payphones, therefore, these carriers argue, a market-based compensation scheme cannot work.[339] GCI contends that as a small carrier operating primarily in Alaska, it is not in a position to negotiate with payphone providers around the country to get a better rate and furthermore, it does not want to block calls from payphone locations.[340]

128. Arch requests that if the Commission maintains a carrier-pays approach, it should either order all 800 carriers to deploy blocking capability so that each 800 customer has the option to block, or apply notions of cost-causation so payphone costs are instead paid by the cost-causer, the payphone user.[341] Champion argues that a call blocking option must be provided, because it does not want to be liable for calls from places such as prisons or other non-business related locations. CPI contends that the cost of tracking individual payphones and blocking calls may be cost prohibitive such that blocking does not necessarily give IXCs any leverage to negotiate with PSPs to constrain the compensation rate. Furthermore, CPI contends that customers do not benefit when calls are blocked, and call blocking will not result in a price that is market based.[342] Several of the IXCs argue that call blocking technology is extremely costly, and that they do not currently have this technology in place.[343]

129. The Coalition contends that the argument that market-based prices may lead to call blocking is without merit, because PSPs have an interest in seeing calls completed— a blocked call does not generate compensation.[344]

130. *Other.* CWI argues that the Commission should clarify that payphones that do not transmit payphone specific coding digits are not eligible for compensation, and requests that the Commission clarify that the "07" coding digit does not identify a call from a payphone.[345]

131. ACTA argues that pass-through billing of an IXCs reseller customer should not be permitted until a new compensation scheme is in place.[346]

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[325] We establish a default rate because certain call blocking capabilities are not yet available to participants in the provision of access code and subscriber 800 calls from a payphone, and thus the market is not yet free of impediments that interfere with the competitive negotiated process. In the *Payphone Orders* we concluded that, once competitive market conditions exist, the most appropriate way to ensure that PSPs receive fair compensation for each call is to let the market set the price for individual calls originated on payphones. It is only in cases where the market does not or cannot function properly that the Commission needs to take affirmative steps to ensure fair compensation. For example, because TOCSIA requires all payphones to unblock access to alternative OSPs through the use of access codes (including 800 access numbers), PSPs cannot block access to 800 numbers generally. However, TOCSIA does not prohibit an IXC from blocking subscriber 800 numbers from payphones, particularly if the IXC wants to avoid paying the per-call compensation charge on these calls. We concluded in the *Payphone Orders* that this uneven bargaining between parties necessitates the Commission's involvement.

[326] AirTouch Reply at 5.

[327] PageNet Reply at 10; PCIA Reply at 7.

[328] PageMart Reply 8.

[329] *See, e.g.*, AirTouch Reply at 8–9 (arguing that the average paging call lasts approximately 20 seconds, as compared to the Coalition data stating that the typical duration of a call from a payphone lasts 3.22 to 3.42 minutes); PageNet Reply at ii, 14–15 (stating that it should be charged rates that reflect its individual called party characteristics, because subscriber 800 calls are shorter in duration and generate less revenue than access code calls).

[330] AirTouch Reply at 5; PageNet Reply at i, 7 (arguing that a calling-party pays mechanism allows the calling party to seek out a lower priced payphone and thus exerts pressure on the PSPs to charge competitive rates and further, that the mechanism upon which the market scheme was established, call blocking, is not in place). PageNet further argues that a calling party pays system avoids FCC determination of payphone costs and the extent to which commissions paid to location owners should be included in these payphone costs. *See PageNet* Reply, supra. See also PageMart Reply at 3; PCIA Reply at 7; Arch Reply at 9.

[331] PCIA Reply at 2.

[332] APCC Reply at 23–32.

[333] Id. at 30.

[334] Id.

[335] AirTouch Reply at 5.

[336] AirTouch Comments at 8; AirTouch Reply at 4.

[337] PageMart Comments at 2.

[338] MCI Comments at 4. See PageMart Reply at 4 (stating that a system that encourages call blocking does not further the Commission's goal of providing telecommunications services to the greatest possible number of consumers).

[339] PageNet Reply at i, 3, 6 (arguing that the mechanism under which the Commission adopted a carrier party pays scheme-rates determined on real time basis'is not available); PageMart Reply at 3; PCIA Reply at 3.

[340] GCI Comments at 3.

[341] Arch Reply at 5.

[342] CPI Reply at 4.

[343] Sprint Comments at 6; AT&T Comments at 17; CWI Comments at 10–11.

[344] Coalition Reply at 8–9.

[345] CWI Reply at 14–15.

[346] ACTA Comments at 4 (stating that if pass through billing is permitted, then requirements

2. *Discussion*

132. We decline to address in this proceeding issues related to the implementation of the per-call compensation structure beyond the per-call compensation rate. The above issues were raised by parties in response to the *Notice*, despite its limited scope. In this order, we do not revisit the issue of who is responsible for paying compensation and whether carriers can block, issues already addressed in the *Payphone Orders*, and upheld by the court. We also decline to evaluate at this time, a new proposal relating to the tracking of calls, or that we establish a compensation scheme on a per-minute rather than per-call basis, which could substantially delay the beginning of the per-call compensation scheme. To the extent that we decide to revisit any of these issues, such review will be addressed in a subsequent proceeding.

133. We decline to grant CWI's request that we clarify the payphone-specific coding digit requirements set forth in the *Payphone Orders*, because the purpose of this order is to establish a default per-call compensation rate. We plan to address payphone-specific coding digit issues in a subsequent order. As discussed above, we note that the Bureau has granted a waiver until March 9, 1998, for PSPs to comply with payphone-specific coding digit requirements. Pursuant to that waiver, IXCs must pay compensation to PSPs including those with payphones that cannot transmit payphone-specific coding digits.[347]

IV. Procedural Matters

A. Final Paperwork Reduction Act Analysis

134. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104–13, and does not contain new and/or modified information collections subject to Office of Management and Budget review. The information and collection requirements in this item are contingent upon approval by the Office of Management and Budget.

B. Final Regulatory Flexibility Act Analysis

135. As required by the Regulatory Flexibility Act (RFA),[348] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking*.[349] The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[350]

1. *Need for, and Objectives of, the Second Report and Order*

136. The objective of the rules adopted in this order is "to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public." [351] In doing so, the Commission is mindful of the balance that Congress struck between this goal of bringing the benefits of competition to consumers and its concern for the impact of the 1996 Telecommunications Act on small businesses.

2. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

137. *Summary of the Initial Regulatory Flexibility Analysis (IRFA).* In the IRFA, the Commission solicited comment on alternatives to our proposed rules that would minimize the potential impact on small entities consistent with the objectives of this proceeding. The Commission received one comment on the potential impact on small business entities, which the Commission considered in promulgating the rules in this Order. Frontier commented generally that the compensation scheme advanced in the NPRM was "unnecessarily onerous and inefficient" and "in conflict with the goals of the * * * Regulatory Flexibility Act." [352] Frontier did not comment specifically on what aspect of the compensation scheme would have economic impact on small business entities. We disagree with Frontier's general assertion that the compensation scheme is in conflict with the Regulatory Flexibility Act. Our rules are designed to facilitate the development of competition, which benefits many small business entities. The rules will ensure that payphone services providers, many of whom may be small business entities, receive fair compensation. Our rules provide significant flexibility to permit the affected parties, including small business entities, to structure procedures that would minimize their burdens. For example, the rules require IXCs and intraLATA carriers, as primary economic beneficiaries of payphone calls, to track the calls they receive from payphones. These carriers have the option of performing these functions themselves or contracting out these functions to another party, such a LEC or clearinghouse. We also provide a transition period. We believe that our rules are designed to effectively optimize the efficiency and minimize the burdens of the compensation scheme on all parties, including small entities.

3. *Description and Estimate of the Number of Small Entities to Which Rules Will Apply*

138. For the purposes of this order, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[353] Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[354] SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity when it has no more than 1,500 employees.[355]

139. We have found incumbent LECs to be "dominant in their field of operation" since the early 1980s, and we consistently have certified under the RFA [356] that incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses.[357] We have made similar

need to be established to ensure fair and accurate billing).

[347] *Bureau Waiver Order*, DA 97–2162 (rel. Oct. 7, 1997).

[348] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996) (CWAAA) Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[349] Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128, *Notice of Proposed Rulemaking*, 61 FR 31481 (June 6, 1996); 11 FCC Rcd 6716 (1996) ("*NPRM*").

[350] *See* 5 U.S.C. § 604.

[351] 47 U.S.C. § 276(b)(1).

[352] Frontier Comments in response to the IRFA at 2.

[353] See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

[354] 15 U.S.C. § 632. See, e.g., Brown Transport Truckload, Inc. v. Southern Wipers, Inc., 176 B.R. 82 (N.D. Ga. 1994).

[355] 13 CFR § 121.201.

[356] *See* 5 U.S.C. § 605(b).

[357] *See, e.g.*, Expanded Interconnection with Local Telephone Company Facilities, *Supplemental Notice of Proposed Rulemaking*, 56 FR 52496 (October 21, 1991); 6 FCC Rcd 5809 (1991); MTS and WATS Market Structure, *Report and Order*, 52 FR 21536 (June 8, 1987); 2 FCC Rcd 2953, 2959 (1987) (citing MTS and WATS Market Structure, *Third Report and Order*, 48 FR 10319 (March 11, 1983); 93 F.C.C.2d 241, 338–39 (1983)).

determinations in other areas.[358] However, in the *Local Competition* proceeding, several parties, including the SBA, commented that we should have included small incumbent LECs in the IRFA pertaining to that order.[359] We recognize SBA's special role and expertise with regard to the RFA, and intend to continue to consult with SBA outside the context of this proceeding to ensure that the Commission is fully implementing the RFA. Although we are not fully persuaded that our prior practice has been incorrect, we will, include small incumbent LECs in this FRFA, while continuing to hold that the terms "small entities" and "small businesses" does not encompass "small incumbent LECs." We use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."[360]

140. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (the Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[361] This number encompasses a broad category which contains a variety of different subsets of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."[362] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this Order. We estimate below the potential small entity telephone service firms or small incumbent LECs that may be affected by this Order by service category.

141. *Wireline Carriers and Service Providers.* The SBA's definition of small entities for telephone communications companies, other than radiotelephone (wireless) companies, is one employing no more than 1,500 persons.[363] The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[364] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this Order.

142. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS).[365] According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.[366] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this Order.

143. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data, 97 companies reported that they were engaged in the provision of interexchange services.[367] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 97 small entity IXCs that may be affected by the decisions and rules adopted in this Order.

144. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 30 companies reported that they were engaged in the provision of competitive access services.[368] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are

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[358] *See, e.g.*, Implementation of Sections of the Cable Television Consumer Protection Act of 1992: Rate Regulation, *Sixth Report and Order and Eleventh Order on Reconsideration*, 60 FR 10534 (February 27, 1995); 10 FCC Rcd 7393, 7418 (1995).

[359] The Small Business Administration (SBA), the Rural Telephone Coalition (Rural Tel. Coalition), and CompTel maintain that the Commission violated the RFA when it failed to include small incumbent LECs in its IRFA without first consulting SBA to establish a definition of "small business." *See Local Competition Order* at paras. 1328–30.

[360] *See* 13 CFR § 121.210 (SIC 4813).

[361] United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1–123 (1995) ("*1992 Census*").

[362] 15 U.S.C. § 632(a)(1).

[363] 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4812.

[364] 1992 Census, *supra*, at Firm Size 1–123.

[365] All carriers that provide interstate service are required to pay into the TRS Fund, which provides access to Telecommunications Device for the Deaf (TDD). *See generally* 47 CFR §§ 64.601 *et seq.*

[366] Federal Communications Commission, CCB, Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Tbl. 21 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Feb. 1996) ("*TRS Worksheet*").

[367] *Id.*

[368] *Id.*

fewer than 30 small entity CAPs that may be affected by the decisions and rules adopted in this Order.

145. *Operator Service Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services (OSPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 29 companies reported that they were engaged in the provision of operator services.[369] Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 29 small entity operator service providers that may be affected by the decisions and rules adopted in this Order.

146. *Payphone Operators.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of payphone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 197 companies reported that they were engaged in the provision of payphone services.[370] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of payphone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 197 small entity payphone operators that may be affected by the decisions and rules adopted in this Order.

147. *Resellers (including debit card providers).* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies (SIC 4812 and 4813). The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 206 companies reported that they were engaged in the resale of telephone services.[371] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 206 small entity resellers that may be affected by the decisions and rules adopted in this Order.

148. *800-Subscribers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to 800-subscribers. The most reliable source of information regarding the number of 800-subscribers of which we are aware appears to be the data we collect on the number of 800-numbers in use.[372] According to our most recent data, at the end of 1995, the number of 800-numbers in use was 6,987,063. Although it seems certain that some of these subscribers are not independently owned and operated businesses, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of 800-subscribers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800-subscribers that may be affected by the decisions and rules adopted in this Order.

149. *Location Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to location providers. A location provider is the entity that is responsible for maintaining the premises upon which the payphone is physically located. Due to the fact that location providers do not fall into any specific category of business entity, it is impossible to estimate with any accuracy the number of location providers. Using several sources, however, we have derived a figure of 1,850,000 payphones in existence.[373] Although it seems certain that some of these payphones are not located on property owned by location providers that are small business entities, nor does the figure take into account the possibility of multiple payphones at a single location, we are unable at this time to estimate with greater precision the number of location providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,850,000 small entity location providers that may be affected by the decisions and rules adopted in this Order.

150. *Wireless (Radiotelephone) Carriers (including paging services).* The SBA's definition of a small business radiotelephone company is one employing fewer than 1,500 persons.[374] The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.[375] The Census Bureau also reported that 1,164 of those radiotelephone companies had no more than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules adopted in this Order.

151. *Cellular Service Carriers (including paging services).* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for

[369] *Id.*

[370] *Id.*

[371] *Id.*

[372] Federal Communications Commission, CCB, Industry Analysis Division, *FCC Releases, Study on Telephone Trends,* Tbl. 20 (May 16, 1996).

[373] There are approximately 1.5 million LEC payphones. Statistics of Communications Common Carriers, 1994/1995 edition, Common Carrier Bureau, FCC at 159, Table 2.10 (1995). There are approximately 350,000 competitively provided payphones. *See Ex Parte* Letter to Michael Carowitz, Attorney, Common Carrier Bureau, FCC from Michael Benson, Senior Product Manager, PPO Compensation Clearinghouse, Cincinnati Bell (Apr. 24, 1996). Cincinnati Bell, as the payphone compensation paying agent for three interexchange carriers, states that it receives quarterly bills from PPOs for more than 350,000 competitively provided payphones. *Id.*

[374] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

[375] United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size,* at Firm Size 1–123 (1995) ("*1992 Census*").

telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 789 companies reported that they were engaged in the provision of cellular services.[376] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 789 small entity cellular service carriers that may be affected by the decisions and rules adopted in this Order.

152. *Mobile Service Carriers (including paging services).* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 117 companies reported that they were engaged in the provision of mobile services.[377] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, we estimate that there are fewer than 117 small entity mobile service carriers that may be affected by the decisions and rules adopted in this Order.

153. *Broadband PCS Licensees (including paging services).* The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 CFR § 24.720(b), the Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. Our definition of a "small entity" in the context of broadband PCS auctions has been approved by SBA.[378] The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. We do not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions.[379] Based on this information, we conclude that the number of broadband PCS licensees affected by the decisions in this Order includes, at a minimum, the 90 winning bidders that qualified as small entities in the Block C broadband PCS auction.

154. At present, no licenses have been awarded for Blocks D, E, and F of broadband PCS spectrum. Therefore, there are no small businesses currently providing these services. However, a total of 1,479 licenses will be awarded in the D, E, and F Block broadband PCS auctions, which are scheduled to begin on August 26, 1996. Of the 153 qualified bidders for the D, E, and F Block PCS auctions, 105 were small businesses.[380] Eligibility for the 493 F Block licenses is limited to entrepreneurs with average gross revenues of less than $125 million.[381] There are 114 eligible bidders for the F Block.[382] We cannot estimate, however, the number of these licenses that will be won by small entities under our definition, nor how many small entities will win D or E Block licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees[383] and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, we assume for purposes of this FRFA, that all of the licenses in the D, E, and F Block Broadband PCS auctions may be awarded to small entities under our rules, which may be affected by the decisions and rules adopted in this Order.

155. *SMR Licensees (including paging services).* Pursuant to 47 CFR § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[384] The rules adopted in this Order may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in this Order.

156. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this Order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer

[376] *Id.*

[377] *Id.*

[378] *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order*, 59 FR 37566 (July 22, 1994); 9 FCC Rcd 5532, 5581–84 (1994).

[379] The FCC's Personal Communications Services (PCS) Entrepreneurs' Block (C Block) auction began on December 18, 1995 and closed on May 6, 1996. The reauction for 18 defaulted PCS C Block licenses commenced on July 3, 1996 and was completed on July 16, 1996.

[380] *See* Auction of Broadband Personal Communications Service (D, E, and F Blocks), *Public Notice*, DA 96–1400 (rel. Aug. 20, 1996).

[381] Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59, Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, Report and Order, GN Docket No. 90–314, 61 FR 33859 (July 1, 1996); 11 FCC Rcd 7824 (1996).

[382] *See* Auction of Broadband Personal Communications Service (D, E, and F Blocks), *Public Notice*, DA 96–1400 (rel. Aug. 20, 1996).

[383] *1992 Census*, Table 5, Employment Size of Firms: 1992, SIC Code 4812.

[384] *See* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89–583, *Second Order on Reconsideration and Seventh Report and Order*, 60 FR 48913 (September 21, 1995); 11 FCC Rcd 2639, 2693–702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking*, 61 FR 6212 (February 16, 1996); 11 FCC Rcd 1463 (1995).

than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions in this Order.

4. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.*

157. This order results in no additional filing requirements.

5. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.*

158. Section 276(b)(1)(A) directs the Commission to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone. * * * "[385] To implement Section 276(b)(1)(A), this *Second Report and Order* establishes a market-based per-call compensation rate of $0.284 to be paid to the independent payphone service providers (PSPs) for services rendered in connection with originating noncoin calls from payphones. The payphone industry appears to have the potential of being a very competitive industry once the significant subsidies and entry/exit restrictions which are presently distorting the competition are removed. However, we perceive two potential areas that could have an economic impact on small businesses and small incumbent LECs: (1) the amount of compensation paid to PSPs, and (2) the administration of per-call compensation.

159. *Amount of compensation:* By adopting a market-based local coin rate adjusted for coin differences, we ensure that PSPs, many of whom may be small business entities, receive fair compensation for subscriber 800 and access code calls. By tying the per-call compensation to the market-based local coin rate, adjusted for cost differences, we further ensure that PSPs receive fair compensation for each and every completed call made from a payphone.[386]

160. Many commentators, notably the IXCs, contend that marginal cost of originating a payphone call should be used as the basis for compensating PSPs. We conclude that use of a marginal cost standard or any closely related TSLRIC standard would leave PSPs under compensated, because such cost standards do not permit the recovery of any of a PSPs' fixed costs, which make up the bulk of a PSP's costs. We also reject, for similar reasons, suggestions that current local coin rates be used as a surrogate for per-call compensation. Local coin rates are not necessarily fairly compensatory. Local coin rates in some jurisdictions may not cover the marginal cost of service and therefore, would not fairly compensate the PSPs.

161. We reject the proposal of the BOCs and some independent payphone providers to use AT&T O+ commissions as a measure of fair value of the service provided by independent payphone providers when they originate an interstate call. These commissions may include compensation for factors other than the use of the payphone, such as a PSP's promotion of the OSP through placards on the payphone. In the absence of reliable data, the appropriate per-call compensation amount is whatever amount the particular payphone charges for a local coin call. PSPs, IXCs, subscriber 800 carriers, and intraLATA carriers, many of whom may be small business entities, may find it advantageous to agree on an amount for some or all compensable calls that is either higher or lower than the local coin rate at a given payphone because it will grant parties in the payphone industry some flexibility and allow them to take advantage of technological advances.

162. *Payment of compensation:* Various commenters, including small IXCs and paging services, proposed that the Commission reconsider the use of a "caller-pays" system.[387] We decline to revisit a caller-pays approach on remand, because the caller-pays system adopted in the *Report and Order* was upheld by the court in *Illinois Public Telecomm*, and reiterate that those approaches would involve greater transaction costs that can pose particular burdens for small businesses.

163. However, in the interests of administrative efficiency and lower costs, we require that facilities based carriers should pay the per-call compensation for calls received by their reseller customers. This would permit competitive facilities based carriers to negotiate contract provisions that would require the reseller to reimburse the carrier. We believe our actions will expedite and simplify negotiations, minimize regulatory burdens and the impact of our decisions for all parties, including small entities.

164. *Report to Congress.* The Commission will send a copy of the *Second Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). A copy of the *Second Report and Order* and this FRFA (or summary thereof) will also be published in the **Federal Register**, *see* 5 U.S.C. § 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

V. Conclusion

165. We conclude in this order that as of October 7, 1997, IXCs must compensate PSPs for all coinless payphone calls not otherwise compensated pursuant to contract, including subscriber 800 and access code calls, 0+ and inmate calls, at the rate of $0.284 per call. We base this decision on the conclusion that the default rate for per-call compensation for these calls is the deregulated local coin rate adjusted for cost differences. The rate of $0.284 will serve as the default per-call compensation rate for coinless payphone calls for the first two years of per-call compensation. After the first two years of per-call compensation, the market-based local coin rate adjusted for net avoided costs is the surrogate for the default per-call rate for coinless calls.

VI. Ordering Clauses

166. Accordingly, pursuant to authority contained in Sections 1, 4, 201–205, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201–205, 215, 218, 219, 220, 226, and 276, *It is ordered* that the policies, rules, and requirements set forth herein *are adopted.*

167. *It is further ordered* that this order is effective upon publication in the **Federal Register**.

168. *It is further ordered* that the September 10, 1997 Motion of the American Public Communications Council For Leave To File Reply Comments One Day Late, and the September 10, 1997 Motion of MCI For Leave To File An Erratum *Are Granted.*

169. *It is further ordered* that the September 16, 1997 Motion of Sprint Corporation to Require Production of A Cost Study *Is Denied.*

170. *It is further ordered*, that 47 CFR Part 64 *Is amended* as set forth below, effective upon publication in the **Federal Register**.[388]

[385] 47 U.S.C. § 276(b)(1)(A).

[386] Additionally, by adopting a rate that is less than the $0.35 initially proposed, we are mindful of the concerns of small businesses that the $0.35 rate is too high.

[387] *See supra* paras. 126, 132.

[388] The Commission finds, for the reasons set forth in para .3, *supra*, that good cause exists for

Continued

171. It is further ordered that the Commission's Office of Managing Director SHALL SEND a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

List of Subjects in 47 CFR Part 64

Communications common carriers, Operator service access, Payphone compensation, Telephone.

Rule Changes

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended: 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 276, 48 Stat. 1070, as amended; 47 U.S.C. 201, 218, 226, 228, 276 unless otherwise noted.

2. Section 64.1300 (c) and (d) are revised to read as follows:

§ 64.1300 Payphone compensation obligation.

* * * * *

(c) In the absence of an agreement as required by paragraph (a) of this section, the carrier is obligated to compensate the payphone service provider at a per-call rate equal to its local coin rate less $0.066 at the payphone in question.

(d) For the initial two-year period during which carriers are required to pay per-call compensation, in the absence of an agreement as required by paragraph (a) of this section, the carrier is obligated to compensate the payphone service provider at a per-call rate of $0.284. After this initial two-year period of per-call compensation, paragraph (c) of this section will apply.

Note: This attachment will not be published in the Code of Federal Regulations.

Attachment B—Parties Filing Comments in Response to Payphone Remand Public Notice

1. Air Touch Paging ("AirTouch")
2. American Public Communications Council ("APCC")
3. America's Carriers Telecommunications Association ("ACTA")
4. AT&T Corp. ("AT&T")
5. Cable and Wireless, Inc. ("CWI")
6. Communications Central, Inc. ("CCI")
7. Competition Policy Institute ("CPI")
8. Competitive Telecommunications Association ("CompTel")
9. Excel Telecommunications, Inc. ("Excel")
10. Frontier Corporation ("Frontier")
11. General Communication, Inc. ("GCI")
12. Inmate Calling Services Providers Coalition ("Inmate")
13. International Telecard Association ("ITA")
14. LCI International Telecom Corp. ("LCI")
15. MCI Telecommunications Corporation ("MCI")
16. MIDCOM Communication, Inc. ("MIDCOM")
17. NATSO, Inc. ("NATSO")
18. PageMart Wireless, Inc. ("PageMart")
19. Paging Network, Inc. ("PageNet")
20. Peoples Telephone Company, Inc. ("Peoples")
21. Personal Communications Industry Association ("PCIA")
22. RBOC/GTE/SNET Payphone Coalition ("RBOC")
23. RCN Telecom Services, Inc. ("RCN")
24. Software Defined Network Users Association ("SDN")
25. Sprint Corporation ("Sprint")
26. Telaleasing Enterprises, Inc. ("TEI")
27. Telecommunications Resellers Association ("TRA")
28. Teleport Communications Group Inc. ("Teleport")
29. United States Telephone Association ("USTA")
30. WorldCom, Inc. d/b/a LDDS WorldCom ("WorldCom")

Note: This attachment will not be published in the Code of Federal Regulations.

Attachment C—Parties Filing Reply Comments to Payphone Remand Public Notice [389]

1. Air Touch Paging ("AirTouch")
2. American Public Communications Council ("APCC")
3. America's Carriers Telecommunications Association ("ACTA")
4. Arch Communications Group ("Arch")
5. AT&T Corp. ("AT&T")
6. Cable and Wireless, Inc. ("CWI")
7. Competition Policy Institute ("CPI")
8. Competitive Telecommunications Association ("CompTel")
9. Consumer Federation of American and Consumer Action ("CFA")
10. Excel Telecommunications, Inc. and Telco Communications Group, Inc. ("Excel")
11. Frontier Corporation ("Frontier")
12. GE Capital Communications Services Corporation ("GECCS")
13. General Communication, Inc. ("GCI")
14. Illinois Public Telecommunications Association ("IPTA")
15. Inmate Calling Services Providers Coalition ("Inmate")
16. International Telecard Association ("ITA")
17. IPSP Ad Hoc Committee for Consumer Choice ("IPSP")
18. MCI Telecommunications Corporation ("MCI")
19. MIDCOM Communication, Inc. (MIDCOM)
20. Oncor Communications ("Oncor")
21. PageMart Wireless, Inc. ("PageMart")
22. Paging Network, Inc. ("PageNet")
23. Peoples Telephone Company, Inc. and Communications Central, Inc. ("Peoples")
24. Personal Communications Industry Association ("PCIA")
25. RBOC/GTE/SNET Payphone Coalition ("Coalition")
26. RCN Telecom Services, Inc. ("RCN")
27. Sprint Corporation ("Sprint")
28. Telaleasing Enterprises, Inc. ("TEI")
29. United States Telephone Association ("USTA")
30. WorldCom, Inc. d/b/a LDDS WorldCom ("WorldCom")

[FR Doc. 97–28614 Filed 10–29 97; 8:45 am]

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the effective date to be less than 30 days after publication in the **Federal Register**.

[389] The following parties have submitted letters to the Commission, which are treated as informal comments and considered part of the record in this proceeding: Borden, Champion, and Sitel.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 96–128; DA 97–2214]

Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Notice of partial waiver of regulations.

SUMMARY: On October 7, 1997, the Common Carrier Bureau granted, on its own motion, a limited waiver of five months, until March 9, 1998, to those local exchange carriers and payphone service providers that cannot provide payphone-specific digits as required by orders in this proceeding. This limited waiver applied to the requirement that local exchange carriers provide payphone-specific coding digits to payphone service providers, and that payphone service providers provide coding digits from their payphones before they can receive per-call compensation from interexchange carriers for subscriber 800 and access code calls, and 0+ and inmate calls (47 CFR 64.1300–64.1340). The limited waiver recognized that three parties had filed petitions for waiver of the payphone-specific coding digit requirements. This document seeks comment on those waiver requests.

DATES: The partial waiver of 47 CFR 64.1300–64.1340 is effective October 7, 1997 until March 9, 1998. Comments are due on or before October 30, 1997, and reply comments are due on or before November 6, 1997.

ADDRESSES: Federal Communications Commission, Room 222, 1919 M St., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:
Rose Crellin or Greg Lipscomb, Formal Complaints and Information Branch, Enforcement Division, Common Carrier Bureau. (202) 418–0960.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–28759 Filed 10–29–97; 8:45 am]
BILLING CODE 6712–01–P–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1807, 1816, 1817, 1827, 1832, 1837, 1842, 1845, and 1852

Miscellaneous Revisions to the NASA FAR Supplement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement (NFS) to specify sources of the NASA Acquisition Forecast; amend regulations on types of contracts and special contracting methods; correct errors in regulations on patents, data, and copyrights; add new language on contract financing; remove unnecessary language relating to service contracting; implement direct submission of vouchers to NASA paying offices; and clarify contractor property reporting requirements.

EFFECTIVE DATE: October 30, 1997.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA, Office of Procurement, Contract Management Division (Code HK), (202) 358–0478.

SUPPLEMENTARY INFORMATION:

Background

NFS 1807.7205(a) specifies the Internet URL to obtain the annual NASA Acquisition Forecast and its semiannual update. This URL is outdated and is corrected. Paragraph (b) of this section specifies that a hard copy of the forecast may be obtained from the Headquarters Office of Procurement (HS) and the Office of Small and Disadvantaged Business Utilization (Code K). NASA believes electronic access is the most efficient method to disseminate information in an expedient manner, and the hard copy availability is deleted. Changes are made in Part 1816 to revise existing language and add a new section 1816.404. Changes are made to Part 1817 to remove paragraph (a)(2) from section 1817.7001 and transferring it to a new subpart 1817.72. Changes are made to Part 1827 to reinsert language inadvertently deleted in the NFS Rewrite (1827.301) and correct a typographical error (1827.303–70). The change in Part 1837 is to delete paragraph (c) of section 1837.110–70. Changes are made to Parts 1842 and 1852 to implement a Defense Contract Audit Agency (DCAA) program for contractor direct submission of interim vouchers to NASA paying offices without prior DCAA review. Finally, NFS Part 1845 is clarified to specify that fee associated with fabrication of Government property shall be included in Contractor Government property reports.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.).* This final rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1807, 1816, 1817, 1827, 1832, 1837, 1842, 1845, and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1807, 1816, 1817, 1827, 1832, 1837, 1842, 1845, and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1807, 1816, 1817, 1827, 1832, 1837, 1842, 1845, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1807—ACQUISITION PLANNING

1807.105 [Amended]

2. In section 1807.105, the designated paragraph (b)(19) is redesignated as paragraph (b)(20).

1807.7205 [Amended]

3. Section 1807.7205 is revised to read as follows:

1807.7205 Public availability.

The annual forecast and semiannual update are available on the NASA Acquisition Internet Service (http://www.hq.nasa.gov/office/procurement/).

PART 1816—TYPES OF CONTRACTS

1816.402–270 [Amended]

4. In paragraph (a) to section 1816.402–270, the phase "total estimated cost and fee" is revised to read "total value (including options)".

1816.404 [Added]

5. Section 1816.404 is added to read as follows:

1816.404 Fixed-price contracts with award fees.

Section 1816.405–2 applies to the use of FPAF contracts as if they were CPAF contracts. However, neither base fee (see 1816.405–271) nor evaluation of cost control (see 1816.405–274) apply to FPAF contracts.

1816.406–70 [Amended]

6. In paragraph (a) to section 1816.406–70, the phrase "a cost-plus-award-fee" is revised to read "an award-fee".

7. In paragraph (b) to section 1816.406–70, the phrase "a cost-plus-award-fee" is revised to read "an award-fee", and the following sentence is added to the end of the paragraph:

"When the clause is used in a fixed-price award fee contract, it shall be modified by deleting references to base fee in paragraphs (a), and by deleting paragraph (c)(1), the last sentence of (c)(4), and the first sentence of (c)(5)."

8. In paragraph (e) to section 1816.406–70, the phrase "cost-plus-award-fee" is revised to read "an award-fee", and the following sentence is added to the end of the paragraph:

"When the clause is used in a fixed-price award fee contract, it shall be modified to delete references to base fee and to reflect the contract type."

PART 1817—SPECIAL CONTRACTING METHODS

1817.503 [Amended]

9. In section 1817.503, the existing paragraph is redesignated as "(2)" and a new paragraph (a) is added to read as follows:

1817.503 Determinations and findings requirements.

(a) See 1817.72 for additional information on interagency transaction requirements.

* * * * *

1817.7001 [Amended]

10. In section 1817.7001, paragraph (a)(1) is redesignated as paragraph (a), and paragraph (a)(2) is removed.

Subpart 1817.72—[Added]

11. Subpart 1817.72 is added to read as follows:

Subpart 1817.72—Interagency Transactions

1817.7201 Policy.

(a) Although the Space Act provides interagency transaction authority nearly equivalent to the Economy Act, NASA has elected to conform its implementation of the Space Act to the requirements of the Economy Act.

Therefore, unless exempt from the Economy Act for reasons other than the general authority of the Space Act, interagency acquisitions shall be supported by a Determination and Findings equivalent to that required for Economy Act transactions (see FAR 17.503 and 1817.503). This requirement applies to all purchases of goods or services under contracts entered into or administered by the Military Departments or other agencies. The Space Act may be cited as authority for a transaction where appropriate, but that does not provide relief from this D&F requirement.

(b) The determination described in paragraph (a) of this section is not required for contracts awarded under the Space Act to Government agencies pursuant to a Broad Agency Announcement when a review of the acquisition records would make it obvious that the award is nor being used as a method of circumventing regulatory or statutory requirements, particularly FAR part 6, Competition Requirements (e.g., when a significant number and value of awards made under the BAA are made to entities other than Government agencies).

PART 1827—PATENTS, DATA, AND COPYRIGHTS

1827.301 [Amended]

12. In section 1827.301, the definition of "Reportable item" is amended by inserting the phrase "in the performance of any work under any NASA contract or" after the word "made".

1827.303–70 [Amended]

13. In 1827.303–70(b)(6), the reference "subparagraphs (a) through (e) of this paragraph" is revised to read "paragraphs (b)(1) through (5) of this section".

PART 1832—CONTRACT FINANCING

1832.412 [Amended]

14. In section 1832.412, paragraph (f) is redesignated as paragraph (f)(1), and a new paragraph (f)(2) is added to read as follows:

1832.412 Contract clause. (NASA supplements paragraphs (a), (e) and (f)).

* * * * *

(f)(1) * * *

(f) *Requirements for payment.* * * *

(2) When FAR clause 52.232–12, Advance Payments, is used with its Alternate V, the contracting officer shall modify Alternate V of the clause at FAR 52.232–12 by substituting the following for paragraph (b). Annotate the clause title by adding "as modified by NASA (Oct 1997)."

"(b) *Use of funds.* The Contractor may use advance payment funds only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, indirect costs, or such other costs approved in writing by the administering contracting office. Payments are subject to any restrictions in other clauses of this contract. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of part 31 of the Federal Acquisition Regulation or other applicable regulations referenced in part 31."

PART 1837—SERVICE CONTRACTING

1837.110–70 [Amended]

15. In section 1837.110–70, paragraph (c) is removed.

PART 1842—CONTRACT ADMINISTRATION

1842.803 [Amended]

16. In section 1842.803, a new paragraph (b)(1)(D) is added to read as follows:

1842.803 Disallowing costs after incurrence. (NASA supplements paragraph (b))

(b) * * *

(1) * * *

(D) Authorizing direct submission of interim vouchers for provisional payment to disbursing offices for contractors with approved billing systems.

* * * * *

PART 1845—GOVERNMENT PROPERTY

1845.7101–3 [Amended]

17. In section 1845.7101–3, a sentence is added to the end of paragraph (b) to read as follows:

1845.7101–3 Computing costs of fabricated special tooling, special test equipment, agency-peculiar property, and contract work in process.

(a) * * *

(b) * * * In addition, fees paid by the Government to the contractor associated with the fabrication of Government property shall be included in the values reported on NF 1018 to enable NASA to properly reflect the total cost of property on its financial statements.

* * * * *

1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.216–87 [Amended]

18. Section 1852.216–87 is amended by adding new paragraph (b)(4) and revising the clause date to read as follows:

1852.216–87 Submission of Vouchers for Payment.

As prescribed in 1816.307–70(e), insert the following clause:

SUBMISSION OF VOUCHERS FOR PAYMENT OCTOBER 1997

* * * * *

(b) * * *

(4) For any period that the Defense Contract Audit Agency has authorized the Contractor to submit interim vouchers directly to the Government paying office, interim vouchers are not required to be sent to the Auditor, and are considered to be provisionally approved for payment, subject to final audit.

* * * * *

1852.237–72 [Removed]

19. Section 1852.237–72 is removed.

[FR Doc. 97–28636 Filed 10–29–97; 8:45 am]
BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 102497C]

Fisheries of the Exclusive Economic Zone Off Alaska, Pacific Cod in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the allocation of Pacific cod total allowable catch (TAC) for processing by the inshore component in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 27, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management

Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific cod TAC allocated to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA was established as 39,321 metric tons (mt) by the Final 1997 Harvest Specifications of Groundfish (62 FR 8179, February 24, 1997), determined in accordance with § 679.20(a)(6)(iii) and subsequent reserve apportionment (62 FR 19062, April 18, 1997).

In accordance with § 679.20(a)(6)(iv)(C), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the Pacific cod TAC for processing by the inshore component in the Central Regulatory Area has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 38,321 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1997 TAC for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to public interest. The fleet will soon take the 1997 TAC for Pacific cod by vessels catching Pacific cod for processing by the inshore component in this area. Further delay would only result in overharvest, which would disrupt the FMP objective of providing sufficient Pacific cod as bycatch to support other anticipated groundfish fisheries. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 27, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–28822 Filed 10-27-97; 2:31 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 210
Thursday, October 30, 1997

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 140

RIN 3150–AF79

Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to allow nuclear reactor licensees to reduce onsite and offsite liability coverage during permanent shutdown of the reactors if they meet specified reactor configurations. This proposed amendment would reduce the level of insurance coverage commensurate with the risk reduction after the appropriate spent fuel cooling period following permanent shutdown of the reactor.

DATES: The comment period expires January 13, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments by mail or addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–6215; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received and the environmental assessment and finding of no significant impact, may be examined at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: George Mencinsky, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–6206, e-mail GJM@nrc.gov.; Stephen Lewis, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–1684, e-mail SHL@nrc.gov.; Ira Dinitz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–1289, e-mail IPD1@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

The current regulations governing insurance coverage for nuclear power reactors are contained in 10 CFR 50.54(w) and 10 CFR 140.11. These regulations do not take into consideration the reduced risk associated with permanently shutdown plants. The exemption process allows reduced insurance coverage for these plants.

Consideration of whether financial protection coverage should be reduced for permanently shutdown plants must take into account the preservation of the solvency of the organization responsible for maintaining and decommissioning these facilities in the unlikely event of a nuclear incident. In addition, consideration would be given to timely payment for valid damage claims by members of the public and minimization of the likelihood that Federal Government indemnity would be exercised for satisfaction of claims for damages.

The regulations in 10 CFR 140.11 require that the licensees of facilities designed to produce substantial amounts of electricity, a rated capacity of 100,000 kWe or more, must have and maintain a primary insurance coverage of $200 million from private sources to protect against offsite liability. In addition, licensees must maintain secondary financial protection in the form of private liability insurance available under an industry retrospective rating plan. The current maximum obligation for secondary financial protection for a licensee in this plan is $75.5 million with respect to any nuclear incident. Thus, the total financial protection for offsite liability for any incident would be the primary layer of $200 million, plus the secondary layer of $75.5 million multiplied by the number of licensed power reactors with a rated capacity of 100,000 kWe or higher.

Under 10 CFR 50.54(w), power reactor licensees must obtain insurance coverage from private sources to provide protection against onsite damage in the event of an accident. These monies would allow the licensee to stabilize and decontaminate the reactor and reactor station site in the event of an accident. The minimum amount of insurance coverage is the lesser of $1.06 billion or the maximum amount of insurance generally available from private sources.

This proposed rule is part of the NRC effort to eliminate unnecessary regulatory burdens for power reactor facilities that are permanently shutdown and in the process of decommissioning. This would complement other amendments for decommissioning, such as the final rule that was published in the **Federal Register** (61 FR 39278) on July 29, 1996, which clarified the procedures leading to permanent shutdown and, eventually, to the termination of an operating license for nuclear power reactors.

This proposed rule would also address a petition for rulemaking (PRM–50–57) submitted by the North Carolina Public Staff Utilities Commission. The petition requested reduction or, preferably, elimination of the $1.06 billion of insurance for onsite reactor stabilization and accident decontamination that is required by 10 CFR 50.54(w) when all nuclear fuel has been removed from the site. The petitioner also requested that the offsite primary and secondary liability coverages required under 10 CFR 140.11(a)(4) be reduced or, preferably, eliminated for shutdown reactors when no nuclear fuel is on the reactor site.

The proposed rule does not address the financial protection requirements for

Independent Spent Fuel Storage Installations (ISFSIs). This subject will be addressed after efforts dealing with technical and licensing issues for ISFSIs are resolved in areas of safeguards requirements, emergency planning, and potential fuel storage handling activities.

Discussion

Several different configurations for permanently shutdown reactors are being established that encompass anticipated spent fuel characteristics and storage modes during the period between permanent shutdown and termination of the license. They are as follows:

Reactor Configuration 1: the reactor is defueled, permanently shutdown, and spent fuel in the spent fuel pool is susceptible to a zircaloy cladding fire if the spent fuel pool is drained accidentally. This configuration encompasses the period from immediately after the core is offloaded to just before the decay heat of the hottest assemblies is low enough that no rapid zircaloy oxidation will take place, and the fuel cladding will remain intact with no gap release if water in the spent fuel pool is lost.

Reactor Configuration 2: The reactor is defueled, permanently shutdown, and spent fuel is in the spent fuel pool but is not susceptible to a zircaloy cladding fire or gap release caused by an incipient fuel cladding failure in the event the spent fuel pool is drained accidentally. In this configuration, the spent fuel can be stored long-term in the spent fuel pool without the possibility of initiating a zircaloy fire or significant fuel cladding failure. In addition, the site may contain a radioactive inventory of liquid radwaste, activated reactor components, and contaminated structural materials. The radioactive inventory during this configuration may change depending on the licensee's proposed shutdown activities and schedule.

Reactor Configuration 3: The reactor is permanently shutdown and no spent fuel is in the reactor or the spent fuel pool. All spent fuel has been removed to an offsite or onsite dry storage independent spent fuel storage installation (ISFSI) or to a DOE high-level repository. The remaining radioactive inventory depends on the decommissioning status and may include liquid radwaste, activated reactor components, and contaminated structural materials.

Reactor Configuration 4: Same as reactor configuration 3, except the reactor site has no significant mobile sources of radioactivity such as contaminated liquids (less than 1000 gallons).

There are potential onsite and offsite radiological consequences that could be associated with the onsite storage of the spent fuel in the spent fuel pool for some time after permanent shutdown. In Reactor Configuration 1, in the event of a complete loss of spent fuel pool coolant inventory such as from a beyond-design-basis earthquake scenario, there is a potential for overheating the fuel by decay heat. This sequence could result in a zircaloy cladding fire that may have significant onsite and offsite consequences.

To prevent fuel rod cladding failure leading to a zircaloy-cladding fire if all spent fuel pool water is lost, the rod cladding temperature must not exceed 565°C. The rod cladding temperature is an important factor that must be considered in modifying the financial protection requirements for permanently shutdown reactors.

In Reactor Configuration 2, the spent fuel has decay heat sufficiently low that the cladding will remain intact even if all spent fuel pool water is lost. However, if there are significant sources of radioactive material stored onsite, it would be appropriate to maintain an adequate level of onsite insurance coverage. Although the offsite consequences are negligible in the Reactor Configuration 2 , because the spent fuel pool is operational and an inventory of radioactive materials exists onsite, an appropriate level of offsite financial protection is required to account for the potential for significant judgments or settlements from litigation that might be instituted and to protect the Federal government from indemnity claims.

In Reactor Configuration 3, when spent fuel is no longer stored in the spent fuel pool, the potential for a radiological incident is primarily in mobile sources of radioactivity onsite at permanently shutdown nuclear reactors. The offsite cleanup costs were found to be negligible for Reactor Configuration 3, but as was noted in Reactor Configuration 2, an appropriate level of offsite financial protection is still required to account for the potential for significant judgments or settlements from litigation that might be instituted and also to protect the Federal government from indemnity claims. Because the level of risk has decreased vis-a-vis the Reactor Configuration 2 by having no spent fuel in the spent fuel pool, the level of offsite financial protection required is being reduced by taking into account only the mobile radioactive inventory onsite.

In the Reactor Configuration 4, with no significant amount of mobile sources of radioactivity such as contaminated liquids onsite, there is no need to maintain the same level of insurance coverage for onsite or offsite financial protection as in Reactor Configuration 3. The basis for the transition from Reactor Configuration 3 to Reactor Configuration 4 is the point at which there is less than 1000 gallons of liquid radwaste stored onsite. A limiting value of 1000 gallons has been considered because it constitutes approximately a factor of 500 reduction in volume from the large volume tank used as the basis for the Reactor Configuration 3 limiting event.

In Reactor Configuration 4, if the licensee has cleaned the site to unrestricted release levels and is awaiting a confirmatory survey for terminating the license, the necessary level of onsite insurance coverage at this stage would be less than when 1000 gallons of liquid radwaste were stored onsite. Under these circumstances, the onsite coverage could be further reduced or eliminated to account for negligible onsite consequences. However, for offsite financial protection requirements, although the offsite consequences are negligible, some level of public liability financial protection must be maintained as long as there remains in effect a nuclear reactor license issued pursuant to 10 CFR part 50 under the authority of Section 103 or 104 of the Atomic Energy Act (42 U.S.C. 2133, 2134). See Section 170a of that Act (42 U.S.C. 2210a). Section 170 is commonly referred to as the "Price-Anderson Act."

Proposed Regulatory Action

The proposed amendments would adjust the onsite insurance coverage requirements and the offsite financial protection requirements for permanently shutdown reactors based on limiting the spent fuel cladding temperatures for accidents involving loss of spent fuel pool water and the amount of onsite radioactive inventory such as liquid radwaste in post shutdown modes. The insurance amounts are based on the estimated cost of recovery from limiting hypothetical events for specific reactor configurations.

The proposed amendments would also address "rated capacity" in 10 CFR 140.11 as used in Section 170a of the Atomic Energy Act to indicate that a permanently shutdown nuclear reactor has a "rated capacity" of zero.

The proposed financial protection requirements are as follows.

Reactor Configuration 1—Fuel in spent fuel pool not sufficiently cool.

—The requirements for onsite insurance coverage and offsite financial protection remain as presently specified in 10 CFR 50.54(w) and 10 CFR 140.11, respectively.

Reactor Configuration 2—Fuel could tolerate a complete loss of water in the spent fuel pool.

—The onsite insurance coverage requirements is $50 million. The amount of $50 million is to recover from a postulated accident in the spent fuel pool.

—The offsite financial protection requirement is $100 million, based on the potential for significant judgments or settlements resulting from litigation despite negligible offsite consequences.

Reactor Configuration 3—No fuel in spent fuel pool, risk dependent on radioactive inventory at plant site in decommissioning status.

—The onsite insurance coverage requirement is $50 million. The amount of $50 million is the estimated amount needed to recover from a postulated onsite event of a rupture of a large slightly contaminated liquid storage tank.

—The offsite financial protection requirement is $50 million, based on the potential for significant judgments or settlements resulting from litigation that might still be instituted despite negligible offsite consequences; however the liability risk is considered less than in Reactor Configuration 2.

Reactor Configuration 4—No fuel in the spent fuel pool and no significant source of mobile radioactive material.

—The onsite insurance coverage requirements is either $25 million or is eliminated. The amount of $25 million is based on the possibility of having to clean up onsite contamination from an accidental rupture of a less-than-1000-gallon contaminated liquid storage tank during shutdown activities. Elimination of onsite insurance coverage would be warranted when a licensee is awaiting a confirmatory survey for license termination.

—The offsite financial protection requirement is $25 million, based on the potential for claims arising from asserted offsite consequences. This would minimize the possibility that Federal Government indemnification would be required. As noted above, the Atomic Energy Act does not allow a 10 CFR part 50 licensee to drop this coverage entirely, only to reduce it.

Discussion

This proposed rule would allow power reactor licensees to reduce their onsite insurance coverage and offsite financial protection requirements during permanent shutdown without resorting to the exemption process. The level of financial protection would be determined for permanently shutdown reactors at a level that coincides with their actual configuration stage.

During Reactor Configuration 1, licensees would be required to maintain onsite insurance coverage and offsite financial protection at the levels currently required by 10 CFR 50.54(w) and 10 CFR 140.11, respectively. This is because the radiological consequences during this stage of permanent shutdown approximate the magnitude of a severe core damage accident.

After allowing the spent fuel to cool down to the point that the maximum spent fuel cladding temperature will not exceed 565°C in the event of a loss of water in the spent fuel pool (Reactor Configuration 2), power reactor licensees would be allowed under 10 CFR 50.54(w) to reduce their onsite insurance coverage from $1.06 billion to $50 million. The reason for this reduction in insurance coverage is that the rapid clad oxidation event of Reactor Configuration 1 is not possible. Insurance coverage requirements for Reactor Configuration 2 are based on the fact that there is a possibility for a fuel handling accident in the spent fuel pool, and significant amounts of mobile radioactive sources remain onsite that have a potential for release during this period. The $50 million coverage would be adequate to clean up the site in the event of a fuel handling accident, an accidental release of cooling water from the spent fuel pool, or a rupture of a large slightly contaminated liquid storage tank.

The proposed insurance coverage requirement for Reactor Configuration 2 does not take into account the reduction in radioactive decay of the spent fuel assemblies with the passage of time during that period. The insurance coverage requirements are based on the conservative assumption of a fuel handling accident shortly after the transition to Reactor Configuration 2. Adjusting insurance requirements during Reactor Configuration 2 based on the decay level of the spent fuel would be burdensome from a regulatory standpoint, as opposed to selecting a bounding figure to encompass any unexpected events concerning the spent fuel pool.

In Reactor Configuration 2, the offsite financial protection requirements set forth in 10 CFR 140.11 would be reduced from $200 million to $100 million for the primary liability coverage, and the licensee would be allowed to withdraw from the secondary liability coverage under Price-Anderson.

In Reactor Configuration 3, when all the spent fuel has been removed to an onsite or offsite dry storage ISFSI or to a DOE high-level repository and the onsite radioactive inventory is greater than 1000 gallons, the onsite insurance coverage requirements would be $50 million under the proposed 10 CFR 50.54(w). This amount is based on the fact that there are still mobile radioactive sources onsite that have the potential to contaminate the site. The maximum cleanup costs associated with Reactor Configuration 3 are estimated at approximately $50 million. The conservative limiting event is the rupture of a large contaminated liquid storage tank that causes soil contamination and the potential to contaminate groundwater. The offsite financial protection requirements under the proposed Section 140.11 would be reduced from $100 million to $50 million, and the licensee would not be required to maintain secondary liability coverage under the Price-Anderson Act for Reactor Configuration 3. With no spent fuel in the spent fuel pool, the risks of offsite contamination have been reduced considerably for this configuration.

In Reactor Configuration 4, there are no significant mobile sources of radioactivity, such as liquid contaminants, onsite. Thus, the potential for onsite and offsite radiological impacts is limited. In this situation, onsite insurance coverage requirements either would be $25 million or would be completely eliminated under the proposed 10 CFR 50.54(w). The amount in each case would be based on information provided by the licensee and evaluated by the staff for the particular circumstances of the shutdown reactor. The $25 million onsite insurance coverage would be required if liquid radwaste remained stored onsite, usually 1,000 gallons or less of radwaste, that may be susceptible to an accidental spill and the consequent need for cleanup of the contaminated site. Elimination of required onsite insurance coverage would be based on the licensee's submittal of its terminal radiation survey to the NRC stating that the site has been cleaned to unrestricted release levels and is awaiting a confirmatory survey for termination of the license. In either case, the onsite and offsite consequences would be negligible.

In Reactor Configuration 4, the required offsite financial protection would be reduced to $25 million to account for the continuing potential for claims based on asserted offsite consequences. A minimum of $25 million in coverage would minimize the possibility that Federal Government indemnification would be required and would be consistent with the requirements of Section 170 of the Atomic Energy Act that power reactor licensees maintain some level of public liability financial protection. The licensee would not be required to maintain secondary liability coverage under Price-Anderson for Reactor Configuration 4.

In addition, "rated capacity" would be addressed in 10 CFR part 140 to indicate that permanently shutdown nuclear power plants have "zero" rated capacity. The effect of this amendment would be to allow the NRC to permit reduction of the primary liability coverage and elimination of the requirement for participation in the secondary liability coverage for nuclear power plants that had made the certifications under 10 CFR 50.82(a)(1)(i) and (ii). However, for reasons stated above, the NRC does not propose to permit this reduction and withdrawal until a reactor has entered the Reactor Configuration 2. At that point the NRC proposes that the reactor no longer be subject to the requirements to maintain primary financial protection in the "maximum amount available at reasonable cost and on reasonable terms from private sources" or to participate in the secondary financial protection public liability system under Section 170 of the Atomic Energy Act. The Commission has already approved, in response to site-specific requests, these adjustments in the primary and secondary public liability insurance regime, and this clarification in part 140, as requested by the Commission, places into the Commission's regulations a statement that a permanently shutdown nuclear power plant is no longer considered to have any "rated capacity."

The petition for rulemaking submitted by the North Carolina Public Staff Utilities Commission would be substantially granted in that the insurance requirements would be significantly reduced, as requested. However, the petition could not be fully granted because of the Price-Anderson statutory provisions that do not allow licensees who continue to hold 10 CFR part 50 licenses to drop the offsite public liability coverage entirely.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The proposed rule change would allow licensees to seek reductions in onsite and offsite insurance coverage following permanent shutdown if they meet specified reactor configurations because of the reduced risk associated with permanently shutdown reactors. The proposed rule change would require no changes in hardware, procedures, organization, or operation of nuclear power reactors. It would not affect the safety requirements for nuclear power reactors because of the significantly reduced risks to the public health and safety in Reactor Configurations 2, 3, and 4 and it would not affect the likelihood, magnitude, or consequences of accidents at the permanently shutdown nuclear power reactors. Although the proposed rule change would reduce the level of financial protection available to pay for environmental or other consequences that may result from accidents at permanently shutdown nuclear power reactors, the Commission considers the reduced required insurance and financial protection coverage to be fully adequate and commensurate with the reduced consequences of potential accidents at permanently shutdown nuclear reactors and that the environment will not be negatively affected. Accordingly, the Commission has determined that the proposed rulemaking would have no significant impacts on the quality of the environment.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from George Mencinsky, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6206.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0011 and 3150–0039.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from George Mencinsky, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6206. The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The proposed rule only affects NRC power reactor licensees, which are not "small entities."

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule because the backfit rule is limited in scope to construction and operation of nuclear reactors. This rule would only apply to reactors that have permanently ceased operations. Therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria,

Reporting and recordkeeping requirements.

10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 50 and 140.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.54(w), paragraph (5) is added to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(w) * * *

(5) For the specified reactor configurations during permanent shutdown, licensees shall maintain the following insurance requirements notwithstanding paragraph (w)(1):

(i) For Reactor Configuration 1: when the reactor is defueled, permanently shutdown, and the spent fuel cladding temperature in the spent fuel pool is 565°C or greater for a postulated loss of spent fuel pool cooling event, the insurance coverage must be as specified in paragraph (w)(1).

(ii) For Reactor Configuration 2: when the reactor is defueled and permanently shutdown, no operating reactors are on the site, and the spent fuel cladding temperature in the spent fuel pool does not exceed 565°C for a postulated loss-of-spent-fuel-pool-cooling event, the minimum insurance coverage limit for each reactor must be $50 million.

(iii) For Reactor Configuration 3: when the reactor is defueled and permanently shutdown, no operating reactors are on the site, no fuel is in the spent fuel pool, and the radioactive liquid inventory onsite is 1,000 gallons or greater, the minimum insurance coverage for each reactor must be $50 million.

(iv) For Reactor Configuration 4: when the reactor is defueled and permanently shutdown, no operating reactors are on the site, no fuel is in the spent fuel pool, and the radioactive liquid inventory onsite is less than 1,000 gallons, the minimum insurance coverage for each reactor must be $25 million. For sites awaiting license termination, no insurance coverage is required if the licensee has completed its terminal radiation survey and the site is ready for the confirmatory survey for license termination.

* * * * *

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

1. The authority citation for Part 140 continues to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

2. In § 140.11(a), remove "and" at the end of paragraph (3), change "." at end of paragraph (4) to "; and" and add paragraph (5) to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

(a) * * *

(5) For the specified reactor configurations during permanent shutdown of nuclear power reactors (such reactors being classified as having zero electric power level rated capacity) that were covered during their operation by paragraph (a)(4):

(i) For Reactor Configuration 1: when the reactor is defueled, permanently shutdown, and the spent fuel cladding temperature in the spent fuel pool is 565°C or greater for a postulated loss of spent fuel pool cooling event, in the amount as specified in paragraph (a)(4).

(ii) For Reactor Configuration 2: when the reactor is defueled and permanently shutdown, no operating reactors are on the site, and the spent fuel cladding temperature in the spent fuel pool does not exceed 565°C for a postulated loss-of-spent-fuel-pool-cooling event, in the amount of $100 million for each reactor.

(iii) For Reactor Configuration 3: when the reactor is defueled and permanently shutdown, no operating reactors are on the site, no fuel is in the spent fuel pool, and the radioactive liquid inventory onsite is 1,000 gallons or greater, in the amount of $50 million for each reactor.

(iv) For Reactor Configuration 4: when the reactor is defueled and permanently shutdown, no operating reactors are on the site, no fuel is in the spent fuel pool, and the radioactive liquid inventory onsite is less than 1,000 gallons, in the amount of $25 million for each reactor.

Dated at Rockville, Maryland, this 23rd day of October, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–28679 Filed 10–29–97; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWA–1]

RIN 2120–AA66

Proposed Modification of the Houston Class B Airspace Area; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to modify the Houston, TX, (IAH) Class B airspace area. Specifically, this action proposes to reconfigure two existing subarea boundaries and create an additional subarea within the Houston Class B airspace area. The FAA is proposing this action to enhance safety, reduce the potential for midair collision, and to better manage air traffic operations into, out of, and through the Houston Class B airspace area while accommodating the concerns of airspace users.

DATES: Comments must be received on or before December 1, 1997.

ADDRESSES: Send comments on the proposal in triplicate to the Federal Aviation Administration, Office of the

Chief Counsel, Attention: Rules Docket, AGC–200, Airspace Docket No. 95-AWA–1, 800 Independence Avenue, SW., Washington, DC 20591. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ms. Sheri A. Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AWA–1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will also be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

On December 17, 1991, the FAA published the Airspace Reclassification Final Rule (56 FR 65655). This rule discontinued the use of the term "Terminal Control Area" (TCA) and replaced it with the designation "Class B airspace area." This change in terminology is reflected in this NPRM.

The Class B airspace area program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier or military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of aircraft operating under visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of Class B airspace areas afford the greatest protection for the greatest number of people by giving air traffic control (ATC) increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

On May 21, 1970, the FAA published the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule (35 FR 7782). This rule provided for the establishment of TCAs. To date, the FAA has established a total of 29 Class B airspace areas. The FAA is proposing to take action to modify or implement the application of these proven control areas to provide greater protection for air traffic in the airspace areas most commonly used by passenger-carrying aircraft.

The standard configuration of a Class B airspace area contains three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles (NM), respectively. The standard vertical limits of the Class B airspace area normally should not exceed 10,000 feet mean sea level (MSL), with the floor established at the surface in the inner area and at levels appropriate for the containment of operations in the outer areas. Variations of these criteria may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to the terminal area.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document would be published subsequently in the Order.

Related Rulemaking Actions

On June 21, 1988, the FAA published the Transponder with Automatic Altitude Reporting Capability Requirement Final Rule (53 FR 23356). This rule requires all aircraft to have an altitude encoding transponder when operating within 30 NM of any designated TCA primary airport from the surface up to 10,000 feet MSL. This rule excluded those aircraft that were not originally certificated with an engine driven electrical system, (or those that have not subsequently been certified with such a system), balloons, or gliders.

On October 14, 1988, the FAA published the TCA Classification and TCA Pilot and Navigation Equipment Requirements Final Rule (53 FR 40318). This rule, in part, removed the different classifications of TCAs, and requires the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training.

Pre-NPRM Public Input

In June 1992, an ad hoc committee was formed, representing airspace users, to analyze the Houston Class B airspace area and develop recommendations for modifying the existing airspace design. The ad hoc committee met on several occasions and submitted written

recommendations for modifying the Houston Class B airspace area.

As announced in the Federal Register on January 28, 1994 (59 FR 4134), a pre-NPRM informal airspace meeting was held on April 19, 1994, in Pasadena, TX, to provide local airspace users an opportunity to present input on the design of the planned modifications of the Houston Class B airspace area.

All comments received during the informal airspace meetings and the subsequent comment period were considered and incorporated, in part, in this NPRM. Verbal and written comments were received, and the FAA's findings are summarized below.

Analysis of Comments

One commenter recommended realigning the existing 30 NM arc boundary east-southeast of the George Bush Intercontinental Airport (formerly Houston Intercontinental Airport), in the vicinity of the Baytown Airport, and R.W.J. Airpark.

The FAA supports this recommendation and proposes to realign a portion of the east-southeast boundary of the Houston Class B airspace area defined as (a portion of) the Humble Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) 30 NM arc, at the point where it intercepts Interstate 10 (I–10). From this point, the boundary would continue along the Humble VORTAC 30 NM arc until it intercepts the 20 NM arc of the Hobby Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME). In this area the FAA proposes to establish the floor at 4,000 feet MSL, to allow nonparticipating aircraft ingress and egress out of Bayton Airport and R.W.J. Airpark.

Several commenters suggested that a portion of the surface area around William P. Hobby Airport and Ellington Airport be raised to support ingress and egress at Ellington Airport.

The FAA does not agree with this suggestion because airspace down to the surface is necessary to protect for aircraft operations into and out of William P. Hobby Airport (the secondary airport of the Houston Class B airspace area). However, the FAA proposes to modify a portion of Area A around William P. Hobby Airport, by reconfiguring its eastern boundary and providing Ellington Airport approximately 1½–NM of additional airspace to its west. This would provide aircraft operators utilizing Ellington Airport additional airspace for operations into and out of Ellington Airport.

In addition, the FAA proposes to create an additional subarea within the Houston Class B airspace area, southwest of William P. Hobby Airport, in the vicinity of Southwest Airport, and raise the subarea floor to 2,500 feet MSL. This proposed subarea would allow sufficient airspace for aircraft operations at Southwest Airport without entering the Class B airspace area.

The Proposal

The FAA proposes to amend 14 CFR part 71 by modifying the Houston Class B airspace area. Specifically, this action proposes to reconfigure two existing subarea boundaries, and create an additional subarea within the existing Houston Class B airspace area in the vicinity southwest of the William P. Hobby Airport. The FAA is proposing this action to enhance safety, reduce the potential for midair collision, and to better manage air traffic operations into, out of, and through the Houston Class B airspace area while accommodating the concerns of airspace users. This proposal would realign a portion of the eastern boundary defined as the Humble VORTAC 30 NM arc, located east-southeast of Houston, in the vicinity of Bayton Airport and R.W.J. Airpark, where it intercepts I–10. The FAA proposes to continue the boundary along the Humble VORTAC 30 NM arc until it intercepts the 20 NM arc of the Hobby VOR/DME. In addition to this realignment, the FAA proposes to expand the existing floor to 4,000 feet MSL in this area. The floor at 4,000 feet MSL would allow nonparticipating aircraft ingress and egress out of the Bayton Airport and R.W.J. Airpark.

Additionally, the FAA proposes to reconfigure a portion of Area A around William P. Hobby Airport by reconfiguring its eastern boundary. This modification would provide aircraft operators utilizing Ellington Airport approximately 1 1/2-miles of additional airspace for aircraft operations west of Ellington Airport. Further, the FAA proposes to create a new subarea in the vicinity of Southwest Airport with a floor of 2,500 feet MSL. This modification would provide additional airspace for nonparticipating aircraft operating below the floor of the Houston Class B airspace area.

Area A is unchanged except for the eastern boundary around William P. Hobby Airport and the change to the legal description of Area A. Area B remains unchanged except where the proposed modification aligns with Area A (around William P. Hobby Airport), and where it is proposed to create the additional subarea to the southwest of William P. Hobby Airport. Area C remains unchanged. Area D remains unchanged except in that area along the 30 NM arc east-southeast of Houston, in the vicinity of Bayton Airport and R.W.J. Airpark.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this NPRM: (1) would generate benefits that justify its costs and is not "a significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; (4) would not constitute a barrier to international trade; and (5) would not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply. These analyses are summarized here in the preamble and the full Regulatory Evaluation is in the docket.

This draft Regulatory Evaluation analyzes the potential costs and benefits of the NPRM to amend 14 CFR part 71. The proposed rule would reconfigure two subareas and create an additional subarea within the Houston, TX, Class B airspace area. The proposal would reconfigure subarea A, expand subarea D, and establish a subarea E with a floor of 2,500 feet MSL.

The FAA has determined that aircraft operators would not incur any additional navigational or equipment costs as a result of the reconfiguration of subareas A and D or the establishment of the new subarea E. The proposed rule would establish lateral boundaries for subareas D and E. The FAA concludes that the reconfigured subarea D and the newly created subarea E are small in area, and would not impose any additional avionics equipment or circumnavigation cost onto operators. The reconfiguration of subarea A would move the lateral boundary inward (west), subsequently reducing the overall size of the subarea. The FAA contends that the reduction of

the subarea A lateral boundary may reduce circumnavigation cost for GA operations.

This NPRM would not impose any additional administrative costs onto the FAA for personnel, facilities, or equipment. The modification of subareas A, D and E would only slightly expand the overall size of the Class B airspace area. This proposed action would provide additional ATC participation in subareas D and E with higher operations complexity, but would not expand the Class B airspace area lateral boundaries beyond the 30-NM arc.

In view of the potential benefits of enhanced aviation safety and increased operational efficiency and the negligible cost of compliance, the FAA has determined that this proposed rule would be cost-beneficial.

Initial 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 Federal regulations. The RFA requires regulatory agencies to review rules which may have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A outlines the FAA's procedures and criteria for implementing the RFA.

The FAA's criteria for a "substantial number" is a number that is not less than 11 and that is more than one third of the small entities subject to the NPRM. The small entities that could be potentially affected by implementation of this proposed rule are unscheduled operators of aircraft for hire owning nine or fewer aircraft.

The FAA has determined that this NPRM would not have an adverse effect on a substantial number of small entities. This assessment is based on the premise that potentially impacted operators regularly fly into airports where radar approach control services have already been established. In addition, increasing the overall size of the Class B airspace area by such a small area would not impose any additional cost on circumnavigating operators for time and fuel. The FAA contends that the proposed rule would not have a significant economic impact on a substantial number of small entities, in view of the zero cost of compliance.

The FAA has determined that this NPRM would not result in a significant economic impact on a substantial number of small entities; therefore, a regulatory flexibility analysis is not required under the terms of the RFA.

International Trade Impact Assessment

The NPRM would neither constitute a barrier to international trade for the export of American goods and services to foreign countries, nor for the import of foreign goods and services into the United States. The NPRM would not impose costs on aircraft operators or aircraft manufacturers in the U.S. or foreign countries. The proposed modifications of the Houston Class B airspace area would only affect GA aircraft utilizing U.S. VFR procedures.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more adjusted annually for inflation in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, (of $100 million adjusted annually for inflation) in any one year. Section 203 of the Act, 203 U.S.C 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that among other things provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. However, because expenditures by the private sector will not exceed $100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 3000 Subpart B—Class B Airspace

* * * * *

ASW TX B Houston, TX [Revised]

George Bush Intercontinental Airport (IAH) (Primary Airport)
(Lat. 29°58'50" N., long. 95°20'23" W.)
William P. Hobby Airport (Secondary Airport)
(Lat. 29°38'44" N., long. 95°16'44" W.)
Ellington Field
(Lat. 29°36'27" N., long. 95°09'32" W.)
Humble VORTAC (IAH)
(Lat. 29°57'25" N., long. 95°20'45" W.)
Hobby VOR/DME (HUB)
(Lat. 29°39'01" N., long. 95°16'45" W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL bounded by a line beginning at the intersection of the Humble VORTAC 8-mile arc and the 090° radial; thence clockwise along the Humble VORTAC 8-mile arc to the Humble VORTAC 069° radial; thence east along the Humble VORTAC 069° radial to the 10-mile arc of Humble VORTAC; thence clockwise along the 10-mile arc to the Humble VORTAC 090° radial; thence west to the point of beginning; and that airspace bounded by a line beginning at lat. 29°45'37" N., long. 95°21'58" W.; to lat. 29°45'46" N., long. 95°11'47" W.; thence clockwise along the Hobby VOR/DME 8-mile DME arc to intercept the Hobby VOR/DME 056° radial; thence southwest along the Hobby VOR/DME 056° radial to the 5.1 NM fix, thence direct to the Hobby VOR/DME 131°/005.8 NM fix; thence southeast along the Hobby VOR/DME 131° radial to intercept the Hobby VOR/DME 7 NM arc; thence clockwise on the 7 NM arc to the Hobby VOR/DME 156° radial; thence north along the Hobby VOR/DME 156° radial to the Hobby VOR/DME 6-mile fix; thence clockwise along the Hobby VOR/DME 6 NM arc to the Hobby VOR/DME 211° radial;

thence south along the Hobby VOR/DME 211° radial to the Hobby VOR/DME 8-mile arc clockwise to the point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 (SH 59) and the Hobby VOR/DME 15-mile arc; thence counterclockwise along the Hobby VOR/DME 15-mile arc to the intersection of the Hobby VOR/DME 15-mile arc and the Humble VORTAC 15-mile arc; thence counterclockwise along the Humble VORTAC 15-mile arc to the intersection of the Humble VORTAC 15-mile arc and Westheimer Road lat. 29°44'07" N., long. 95°28'47" W.; thence southwest to and along SH 59 to the point of beginning, excluding Areas A, C and E.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of SH 59 and the Humble VORTAC 20-mile DME arc; thence clockwise along the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and Interstate 10 (I–10), west on I–10 to the Hobby VOR/DME 15-mile arc; thence counterclockwise along the Hobby VOR/DME 15-mile arc to the Humble VORTAC 15-mile DME arc; thence counterclockwise along the Humble VORTAC 15-mile DME arc to the intersection of the Humble VORTAC 15 NM DME arc and Westheimer Road; thence southwest to and along SH 59 to the point of beginning; and that airspace beginning at the intersection of the Hobby VOR/DME 15-mile arc and 156° radial; thence north along the Hobby VOR/DME 156° radial to the Hobby VOR/DME 10-mile arc clockwise along the Hobby VOR/DME 10-mile arc to the Hobby VOR/DME 211° radial; thence south along the Hobby VOR/DME 211° radial to intersect the 15-mile arc to the point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of SH 59 and the Humble VORTAC 30-mile DME arc; thence clockwise along the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30 NM arc and the Hobby VOR/DME 20 NM arc; thence clockwise along the Hobby VOR/DME 20-mile arc to SH 59; thence southwest on SH 59 to the point of beginning, excluding Areas B, C, and E.

Area E. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of the Hobby VOR/DME 15 NM arc and State Road 6 (SR 6); thence southeast along SR 6 to the intersection of Farm Road 521 (FR 521); thence south along FR 521 to the intersection of the Hobby VOR/DME 15 NM arc; thence counterclockwise along the Hobby VOR/DME 15 NM arc to the point of the beginning.

* * * * *

Issued in Washington, DC, on October 22, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

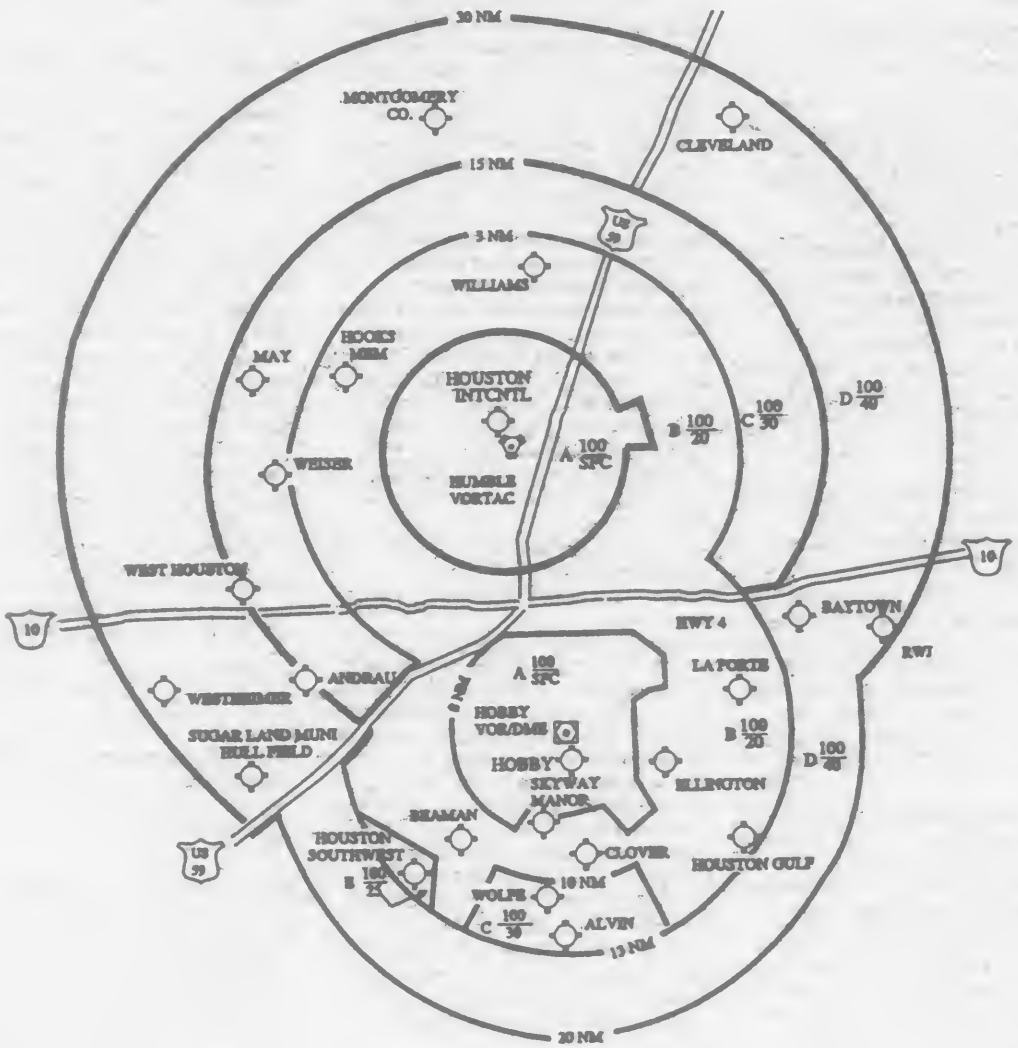
Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix—Houston, TX, Class B Airspace Area

BILLING CODE 4910–13–P

HOUSTON, TEXAS
CLASS B AIRSPACE AREA

(Not to be used for navigation)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Publications Branch

[FR Doc. 97–28753 Filed 10–29–97; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. OST–97–2881]

RIN 2105–AC65

Computer Reservations System (CRS) Regulations

AGENCY: Office of the Secretary, (DOT).

ACTION: Notice extending comment period.

SUMMARY: The Department has initiated a rulemaking to determine whether it should continue or modify its existing rules governing airline computer reservations systems (CRSs). On September 10, 1997, the Department published an advance notice of proposed rulemaking asking for comments on that matter. The Department is now extending the due date for comments and reply comments on the advance notice to December 9, 1997, and January 23, 1998, from the original dates of November 10 and December 9, 1997.

DATES: Comments must be submitted on or before December 9, 1997. Reply comments must be submitted on or before January 23, 1998.

ADDRESSES: Comments must be filed in Room PL–401, Docket OST–97–2881, U.S. Department of Transportation, 400 7th St. SW., Washington , DC 20590. Late filed comments will be considered to the extent possible. To facilitate consideration of comments, each commenter should file six copies of its comments.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: The Department's rules governing CRS operations—14 CFR Part 255—will expire on December 31, 1997, unless the Department readopts them or changes the rules' termination date to a later date. The Department published an advance notice of proposed rulemaking to begin a proceeding for reexamining the rules and determining whether they should be readopted and, if so, whether they should be changed. 62 FR 47606, September 10, 1997. The advance notice made comments and reply comments due on November 10 and December 9, respectively. Sabre and Worldspan, two of the computer reservations systems, asked us to allow the parties to have an additional thirty to sixty days for preparing both their comments and reply comments. Sabre and Worldspan allege that the preparation of adequate comments on the complex issues presented in this rulemaking requires more time than the comment periods established by the advance notice. In addition, American Airlines has orally requested more time for preparing its responses to the advance notice.

We have determined that it would be reasonable to give commenters more time for preparing their responses to the advance notice. The issues are complex, and some major issues, such as the impact of the Internet on airline distribution and the computer reservations system business, have not been addressed by us before in any formal proceeding. At the same time, we should complete our reexamination of the CRS rules as promptly as possible, given the need to update the rules in light of the changes in airline distribution and the CRS business since our adoption of the current rules in 1992.

We will therefore give commenters an additional thirty days for the commments and fifteen days for reply comments.

These extensions should give them ample time for preparing responses to our advance notice and the issues raised there and to the comments filed by other parties. The longer extensions requested by Sabre and Worldspan seem unnecessary—we did not set such lengthy comment periods when we last reexamined the CRS rules, and all major industry participants have been aware for some time that we would be conducting a proceeding to reexamine the need for the rules.

Since neither Sabre nor Worldspan submitted a copy of its request to the docket for this proceeding, we have placed a copy of each request in the docket.

Issued in Washington, D.C. on October 17, 1997.

Nancy E. McFadden,

General Counsel.

[FR Doc. 97–28947 Filed 10–29–97; 8:45 am]

BILLING CODE 4910–62–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20, 22, 24, and 90

[WT Docket No. 97–207; FCC 97–341]

Calling Party Pays Service Option in the Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Request for comments.

SUMMARY: The Commission adopts a *Notice of Inquiry* (NOI) in this proceeding, seeking comment to establish a record Calling Party Pays (CPP), a service currently offered by some Commercial Radio Service (CMRS) providers. The goal of this proceeding is to determine whether the wider availability of CPP would enable CMRS providers to more readily compete with wireline services provided by Local Exchange Carriers (LECs) and to determine whether there are any actions that the Commission could take to promote the wider availability of CPP for CMRS providers. The purpose of this inquiry is to explore means of encouraging and facilitating competition in the local exchange telephone market.

DATES: Comments are due on or before December 1, 1997, and reply comments are due on or before December 16, 1997.

ADDRESSES: Federal Communications Commission, Office of the Secretary, Room 222, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Dr. Pamela Megna or Dr. Joseph Levin, Policy Division, Wireless Telecommunications Bureau (202) 418–1310.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Inquiry* in WB Docket No. 97–207, FCC 97–341, adopted September 25, 1997, and released October 23, 1997. The complete text of this NOI is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 1231 20th Street, Washington, DC 20036.

Synopsis of Notice of Inquiry

1. The Commission initiates this *Notice of Inquiry* (NOI) to seek information regarding Calling Party Pays (CPP), a service option currently offered by some Commercial Mobile Radio Service (CMRS) providers. The purpose of this inquiry is to explore means of encouraging and facilitating competition in the local exchange telephone market. The NOI is intended to explore the subject of CPP to develop a record for determining whether the wider availability of CPP would enable CMRS providers to more readily compete with wireline services provided by Local Exchange Carriers (LECs) and to determine whether there are actions that the Commission could take to promote the wider availability of CPP for CMRS providers.

2. CPP is a service option that some CMRS providers offer whereby the party placing the call or page pays the airtime charge, and any applicable charges for calls transported within the LECs' Local Access and Transport Areas. In order for a CMRS provider to offer this service option, the LEC must be willing and able to provide the CMRS carrier with this billing service or sufficient information for the CMRS carrier to bill the calling party directly.

3. In this proceeding, the Commission seeks information regarding, among other issues, the current availability of the CPP service option, how the calling party is informed of charges that will be incurred, the magnitude of these charges, what technical and contractual requirements are needed to implement this service option, whether there are technical, regulatory, or other barriers impeding the availability of this service option, and whether there are pro-competitive reasons for the Commission to initiate any actions to encourage the availability of this service option.

Current Availability of CPP

4. Although some LECs currently offer a CPP service option to CMRS carriers, it is unclear how many mobile carriers offer the CPP service option to their subscribers. Moreover, outside the United States, CPP seems to be the prevalent billing system for mobile telephony. Thus, the Commission seeks information on which carriers offer the CPP service option, in which geographic markets consumers have the service option, details of the arrangements between LECs and CMRS carriers and between CMRS carriers and subscribers, any regulatory requirements imposed by the various States and consumer reaction to the service option. The Commission seeks comments addressing any additional issues that may be associated with applying CPP to a calling party originating a call to a wireless phone from a wireless phone. The Commission also seeks comment as to the reasons CPP is not offered more broadly.

5. The Commission seeks comment on the level of consumer demand for CPP. Commenters are requested to address whether the market has failed to accommodate consumer demand for this or other service options and is likely to in the future. Commenters should provide detailed information on the specific technical, regulatory, or economic barriers that exist, and what actions, if any, the Commission should take to remove these barriers, in the event that the Commission decides that enhancing access to CPP is an appropriate pro-competitive goal.

6. Parties should also comment as to whether recent developments, including increased competition in the CMRS market, the related decrease in CMRS rates, and the implementation of reciprocal compensation for LEC–CMRS interconnection arrangements, will create sufficient market incentives for CMRS carriers to refrain from charging their own subscribers for incoming calls. To the extent that CPP is offered in a manner that requires the incumbent LEC to pay carrier to carrier airtime charges to complete a call, CPP and reciprocal compensation may address a similar issue (*i.e.* how the CMRS provider recovers the cost of completing a call that did not originate on the CMRS network). Parties are asked to comment on whether reciprocal compensation may obviate or reduce the need for CMRS providers to implement CPP.

Demand Stimulating Effects

7. The Commission seeks comment on current traffic patterns in the United States, and in countries in which CPP is the norm, and on whether CPP promotes more balanced traffic flows and increased demand for CMRS services.

8. It is uncertain, however, whether the balance in incoming and outgoing traffic reported in other countries is due to CPP service or due to other factors. Wireless service may be more desirable in these countries because the wireline network may be inferior in quality or less accessible. Alternatively, the increase in traffic terminating on a wireless network in these countries could be the result of an increase in subscribers' willingness to keep their wireless phones turned on due to the wider use of digital phones with their longer battery lives. The Commission seeks comment on these issues and requests any empirical studies that attempt to isolate the effect of CPP from other variables. In particular, the Commission seeks information on the pricing of wireless and wireline service in those countries in which CPP is the norm, and requests parties to submit any empirical studies or information addressing these issues.

9. In addition some industry sources believe CPP can increase the demand for CMRS services by increasing the minutes of usage or by increasing the number of subscribers. The Commission requests any empirical studies that have documented the effects of CPP on subscribership, traffic patterns (including traffic between wireless and wireline networks), and minutes of use in the markets in which CPP has been implemented. The Commission also seeks information regarding the possibility that CPP could in some way alter the peak usage periods of the wireline telephone network, thus requiring network modifications.

10. The Commission also seeks comment on the availability of the service option whereby Wireless subscribers do not pay for the first minute of calls they receive. The Commission seeks any empirical studies and information on whether this service option encourages consumers to subscribe to mobile telephony services, to subscribe to a digital system, to disclose their mobile telephone number, and to keep their mobile telephone in an active operational mode. Further, the Commission seeks comment regarding whether use of the "first incoming minute free" option more evenly balances traffic to and from wireless networks and whether it would have an effect on the demand for CPP.

Pricing Issues

11. The Commission also seeks information on the pricing structure of CMRS and wireline services across the United States and in other countries. The pricing structure implicit in a CPP service is significantly different than the typical pricing structure for CMRS and local wireline service in the United States. The differences in pricing between local telephone service and the CPP service option could deter some calls from wireline to mobile subscribers and may hinder efforts to minimize distinctions between telephony service provided on wireline and wireless networks. Widespread use of CPP could decrease the extent to which some consumers view CMRS and wireline telephony as close substitutes because the wireline consumer's incremental cost to place a local call to a CMRS phone could significantly

increase while there would be no similar change in the consumer's incremental cost to place a local wireline call. The Commission also seeks information on the proportion of wireline subscribers electing measured local service, and estimates of the potential demand for this option among wireline subscribers, as well as price information for measured local calls and CPP calls, and whether they vary based on time of day or some other factors. In addition, the Commission seeks comments concerning the extent to which differences in prevailing rate levels between wireline and wireless service offerings may affect the relative demand for these services, as well as traffic balances between wireline and wireless networks.

12. Finally, the Commission seeks comment on whether there are fees associated with reprogramming CMRS phones and whether there are monthly charges for CPP. The Commission also requests information regarding the amount of these fees or monthly charges, and whether the rate the calling party is charged varies across markets and the time of day.

Consumer Protection Issues

13. Many State regulatory agencies and consumer groups have raised consumer protection issues related to informing callers that they will be charged a fee for placing a call to a CMRS phone, and informing callers of the magnitude of the charge. Therefore, the Commission seeks information regarding how the calling party can best be informed of charges for calls to CMRS phones, including the magnitude of these charges. The Commission also seeks comment on what technical and contractual capabilities are needed to inform the caller regarding his or her responsibility to pay for the call and regarding the amount of the charge for the call.

14. Finally, the Commission seeks comment on whether it would be in the public interest for the Commission to assist the telecommunications industry and the States to develop a uniform national method to inform the calling party of the magnitude of the charge, and of the calling party's responsibility to pay for the call. Commenters are also requested to suggest any alternatives to a uniform national approach that would be in the public interest.

Technical Issues

15. It appears that the CPP service option requires various infrastructure, contractual, and billing collection modifications that may limit its implementation in the United States. While the mobile carrier must have access to billing collection information for the calling party to be able to charge incoming calls to the calling party, this information may be unavailable in some circumstances and may result in uncollectible revenues for the CMRS carrier. The Commission seeks comment on these assumptions and issues, and on any steps that could be taken to address these concerns and impediments to the operation of CPP.

16. In addition, not all LEC networks currently appear to have the technical capability to exchange the billing information required for CPP. Moreover, the use of call branding [1] as part of a CPP service option may not always be possible. The Commission seeks comment on these technical issues, and on what the Commission, the States, or the industry could do to resolve them.

17. Finally, there are means available to give the called CMRS subscriber using CPP the option to pay for incoming calls in some circumstances. The Commission seeks comment on the technical requirements for this option to be deployed, where this option is currently available, and how the calling party and called party are informed of this additional option.

Legal Issues

18. The Commission also seeks comment regarding any legal issues that may be posed by any actions the Commission may take regarding imposition or implementation of CPP.

19. As a threshold matter, the Commission recognizes that we have stated in the *Arizona Decision*, in the context of ruling on whether a State had made a sufficient showing within the meaning of section 332(c)(3)(B) of the Communications Act [2] that it should be permitted to regulate the rates of CMRS providers, that regulation of CPP was a billing practice that may be regulated by a State as a term or condition under which service is provided. [3]

20. In the wake of the *Arizona Decision*, the Commission has made clear, in the *Local Competition First Report and Order*,[4] that incumbent LECs have an obligation to provide access to unbundled network elements, and that such network elements include information sufficient to enable recipients of the unbundled network elements to provide billing services. In addition, the Eighth Circuit Court of Appeals, in its *Iowa Utilities Board* decision, concluded that the Commission has authority to order LECs to interconnect with CMRS carriers and has the authority to issue rules of special concern to CMRS providers.[5]

21. In light of the *Local Competition First Report and Order* and the *Iowa Utilities Board* decision, the Commission seeks comment regarding the scope of our authority to require LECs to provide billing information and services which will enable CMRS providers to offer CPP services. Specifically, the Commission seeks comment on whether we have authority under section 332 to establish requirements regarding CPP arrangements between LECs and CMRS carriers. The Commission requests any commenters suggesting that the Commission lacks authority under section 332 to identify any other provision of the Communications Act that gives the Commission authority over CPP arrangements. Commenters should also address whether that provision would give us the authority to preempt State regulation in order to establish nationwide rules for CPP.

Procedural Matters

22. The Commission adopts this Notice of Inquiry under the authority contained in sections 4(i), 4(j), and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 403. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before December 1, 1997, and may file reply comments on or before December 16, 1997.

23. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you should file an original and ten copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal

[1] Branding, in this context, is the ability to inform the caller to a CMRS phone (by use of a recorded intercept message) of additional charges applicable to the call.

[2] 47 U.S.C. 332(c)(3)(B).

[3] Petition of Arizona Corporation Commission To Extend State Authority Over Rate and Entry Regulation of All Commercial Mobile Radio Services and Implementation of Sections 3(n) and 332 of the Communications Act, PR Docket No. 94–104 and GN Docket No. 93–252, Report and Order and Order on Reconsideration, 10 FCC Rcd 7824, 7837 (1996) (*Arizona Decision*).

[4] 61 FR 45476, August 29, 1996.

[5] *Iowa Utilities Board*, 1997 WL 403401 (8th Cir., July 18, 1997), at n.21.

Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

24. There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to § 1.1204(a)(4) of the Commission's Rules, 47 CFR 1.1204(a)(4).

List of Subjects 47 CFR Parts 20, 22, 24, and 90

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–28762 Filed 10–29–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 102197D]

RIN 0648–AG27

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 8

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council (Council) has submitted Amendment 8 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region for review, approval, and implementation by NMFS. Written comments are requested from the public.

DATES: Written comments must be received on or before December 29, 1997.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 8, which includes a final supplemental environmental impact statement, an initial regulatory flexibility analysis, a regulatory impact review, and a social impact assessment, should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; phone: 803–571–4366; fax: 803–769–4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a document in the **Federal Register** stating that the amendment is available for public review and comment.

Amendment 8 would: Limit access to the commercial snapper-grouper fishery; allow the retention of snapper-grouper in excess of the bag limits on a permitted vessel that has a single bait net or cast nets on board; subject to specific conditions, exempt snapper-grouper lawfully harvested in Bahamian waters from the requirement that they be maintained with head and fins intact in the exclusive economic zone of the South Atlantic; redefine "optimum yield," "overfished," and "overfishing" for snapper-grouper; and establish a "threshold level" for snapper-grouper, i.e., the level of spawning potential ratio at which the Council will take appropriate action including, but not limited to, eliminating directed fishing mortality and evaluating measures to eliminate any bycatch mortality.

A proposed rule to implement Amendment 8 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with Amendment 8, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish it in the **Federal Register** for public review and comment.

Comments received by December 29, 1997, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve Amendment 8. Comments received after that date will not be considered by NMFS in this decision. All comments on Amendment 8 or on the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 23, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–28713 Filed 10–29–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 210
Thursday, October 30, 1997

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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:30 p.m. on Friday, December 5, 1997, at the Mile High Center, 1700 Broadway, Suite 490, Denver, Colorado 80290. The purpose of the meeting is to discuss followup activities to the Fort Collins community forum and plan future forums in Colorado.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Joseph Arcese, 303–556–3139, or John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1400 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 21, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–28734 Filed 10–29–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 11:00 a.m and adjourn at 3:00 p.m. on Friday, November 21, 1997, at the Xerox Center, 55 West Monroe Street, Suite 1660, Chicago, Illinois 60603. The purpose of the meeting is to discuss civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Joseph Mathewson, 312–360–1110, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 21, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–28736 Filed 10–29–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on Wednesday, November 19, 1997, at the Indiana Department of Workforce Development, Indiana Government Center South, 10 North Senate Avenue, Conference Room SE 301, 3rd Floor, Indianapolis, Indiana 46204. The purpose of the meeting is to discuss civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Paul Chase, 317–920–3190, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 21, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–28735 Filed 10–29–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on Monday, November 17, 1997, at 100 Renaissance Center, Tower 100, Suite 1602, Detroit, Michigan 48243. The purpose of the meeting is to discuss civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Roland Hwang, 517–373–1476, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 21, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–28733 Filed 10–29–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part, and Deferral of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews, request for revocation in part, and deferral of administrative review.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke two antidumping duty orders in part and to defer the initiation of an administrative review for one antidumping duty order.

EFFECTIVE DATE: October 30, 1997.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 C.F.R. 351.213(b)(1997), for administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on certain cold-rolled carbon steel flat products from South Korea and certain corrosion-resistant carbon steel flat products from South Korea. The requests for revocation in part with respect to certain cold-rolled carbon steel flat products and certain corrosion-resistant carbon steel flat products from South Korea were inadvertently omitted from the previous initiation notice (62 FR 50292, September 25, 1997). In addition, the Department received a request to defer for one year the initiation of the March 1, 1996 through August 31, 1997 administrative review of the antidumping duty order on large newspaper printing presses and components thereof, whether assembled or unassembled, from Japan in accordance with 19 C.F.R. 351.213(c). The Department received no objections to this request from any party cited in 19 C.F.R. 351.213(c)(1)(ii).

Initiation of Reviews

In accordance with section 19 C.F.R. 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than September 30, 1998. Also, in accordance with 19 C.F.R. 351.213(c), we are deferring for one year the initiation of the March 1, 1996 through August 31, 1997 administrative review of the antidumping duty order on large large newspaper printing presses and components thereof, whether assembled or unassembled, from Japan.

Antidumping duty proceedings	Period to be reviewed
FRANCE: Industrial Nitrocellulose *	
A–427–009	8/1/96–7/31/97
Societe Nationale des Poudres et Explosifs	
* The incorrect period of review was listed in the previous initiation notice (62 FR 50293, September 25, 1997).	
GERMANY: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled	
A–428–821	3/1/96–8/31/97
MAN Roland Druckmaschinen AG	
TAIWAN: Chrome-Plated Lug Nuts	
A–583–810	9/1/96–8/31/97
Anmax Industrial Co., Ltd.	
Buxton International	
Chu Fong Metallic Electric Co., Ltd.	
Everspring Plastic Corp.	
Gingen Metal Corp.	
Goldwinate Associates, Inc.	
Gourmet Equipment (Taiwan) Corp.	
Hwen Hsin Enterprises Co., Ltd.	
Kwan How Enterprises Co., Ltd.	
Kwan Ta Enterprises Co., Ltd.	
Kuang Hong Industries, Ltd.	
Multigrand Industries, Inc.	
San Chien Electric Industrial Works, Ltd.	
San Shing Hardware Works Co., Ltd.	
Transcend International Co.	
Trade Union International Inc./Top Line	
Uniauto, Inc.	
Wing Tang Electric Manufacturing Company, Inc.	
Countervailing Duty Proceedings	
None.	
Deferred Initiation of Administrative Review	**Period to be Deferred**
JAPAN: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled	
A–588–837	3/1/96–8/31/97
Mitsubishi Heavy Industries, Ltd.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer which is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998 (19 C.F.R. 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 C.F.R. 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: October 24, 1997.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 97–28820 Filed 10–29–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Application may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–046R. *Applicant:* Purdue University, Accounts Payable, 1064 Frehafer Hall, West Lafayette, IN 47907–1064. *Instrument:* Stopped-Flow Spectrophotometer/Fluorimeter System, Model SF–61DX2/X. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* Original notice of this resubmitted application was published in the Federal Register of June 27, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–28821 Filed 10–29–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Administrative Record Closure; Coastal Zone Management: Federal Consistency Appeal by Jessie W. Taylor From an Objection by the South Carolina Office of Ocean and Coastal Resource Management

AGENCY: National Oceanic and Atmospheric Administration; Commerce.

ACTION: Notice of administrative record closure.

Jessie W. Taylor (Appellant) proposes to fill in approximately 0.6 acres of wetlands for the purpose of commercial development, and to mitigate the adverse wetland impacts through his purchase of mitigation credits in a wetland mitigation bank. The site of his proposed activity consists of two undeveloped lots, which are located in a commercial area adjacent to Highway 17, in Surfside Beach, Horry County, South Carolina. The South Carolina Office of Ocean and Coastal Resource Management (State) has objected to the Appellant's activity. The Appellant requested that the Secretary of Commerce (Secretary), override the State's objection based on the ground that the proposed activity is consistent with the objectives of the Coastal Zone Management Act of 1972, as amended.

In its review of the administrative record for this appeal, the National Oceanic and Atmospheric Administration (NOAA) determined that additional information on the Appellant's mitigation proposal would assist the Secretary in deciding whether to override the State's objection. NOAA reopened the record and allowed the Appellant, the State and the Corps an opportunity to file additional comments on the Appellant's mitigation proposal. The Appellant, the State and the Corps each responded to NOAA's request for additional comments. Accordingly, the administrative record for this appeal closed on September 4, 1997, and the Secretary will issue a decision in the matter.

FOR FURTHER INFORMATION CONTACT: Roger B. Eckert, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, (301) 713–2967.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: October 21, 1997.

Monica P. Medina,

General Counsel.

[FR Doc. 97–28709 Filed 10–29–97; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081597D]

Continental Shelf Fishery Resources

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

ACTION: Notice of determinations.

SUMMARY: The Secretary of Commerce, in consultation with the Secretary of State, finds that Arctic surfclams (*Mactromeris polynyma*), Icelandic scallops (*Chlamys islandica*), Greenland cockles (*Serripes groenlandicus*), Propellor clams (*Cyrtodaria siliqua*), and Sea cucumbers (*Cucumbaria frondosa*) are continental shelf fishery resources. This finding extends coastal State authority for conservation and management of said species to areas of the continental shelf beyond its exclusive economic zone.

FOR FURTHER INFORMATION CONTACT: Jonathon Krieger, (301) 713–2276.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)(16 U.S.C. 1802 Section 3 (7)) states "If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are, at the harvestable stage, either—

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil, of the Continental Shelf which appertains to the United States, and publishes notices of such determination in the **Federal Register**, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this Act."

The Government of Canada notified the Government of the United States through the Northwest Atlantic Fisheries Organization that it had identified 12 sedentary species. Five of those species are already listed in section 3 (7) of the Magnuson-Stevens Act (i.e., Snow crabs (*Chionoecetes opilio*), Spiny Crabs (*Lithodes maja*), Red crabs (*Chaceon quinquedens*), American Lobster (*Homarus americanus*), and Ocean quahaug (*Arctica islandica*). Two are deemed not sedentary (i.e., Spiny crabs (*Neolithodes grimaldii*), and Razor clams (*Ensis directus*).

The other five are considered sedentary, and they are: Arctic surfclams (*Mactromeris polynyma*), Icelandic scallops (*Chlamys islandica*), Greenland cockles (*Serripes groenlandicus*), Propellor clams (*Cyrtodaria siliqua*), and Sea cucumbers (*Cucumbaria frondosa*).

Dated: October 23, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–28714 Filed 10–29–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

October 27, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 30, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 65196, published on December 11, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 5, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 30, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month restraint limit [1]
Group II 237, 239, 330–359, 431–459 and 630–659, as a group.	869,497,171 square meters equivalent.
Sublevels in Group II 359(1) [2] (coveralls, overalls and jumpsuits).	624,594 kilograms.
659(1) [3] (coveralls, overalls and jumpsuits).	671,258 kilograms.
Within Group II subgroup 351	1,213,353 dozen.
651	309,578 dozen.
Group III 831–844 and 847–859, as a group.	39,374,149 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[3] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–28784 Filed 10–29–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

October 27, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 30, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on

embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 66248, published on December 27, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 30, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
334/634	271,408 dozen.
336/636	225,169 dozen.
338/339	671,284 dozen of which not more than 407,048 dozen shall be in Categories 338–S/339–S [2].
340/640	378,523 dozen.
347/348	477,358 dozen of which not more than 238,678 dozen shall be in Categories 347–T/348–T [3].
351/651	208,080 dozen.
352	232,501 dozen.
847	150,596 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6304.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–28783 Filed 10–29–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee; November 13, 1997; 1:00 p.m.–4:00 p.m.

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee will conduct a public meeting in the Ground Level Hearing Room at the Commission's Washington, DC headquarters located at 1155 21st Street, NW., Washington, DC 20581, on November 13, 1997, beginning at 1:00 p.m. and lasting until 4:00 p.m.

The agenda will consist of:

Agenda

FPAC 2000

1. Introductory Remarks by Commissioner David D. Spears.
2. A discussion on streamlining and modernizing futures regulations.
3. Briefing by CFTC staff on current regulatory issues being proposed to the CFTC—including:
   A. Special execution procedures established by a contract market and approved by the Commission.
   B. Margining of option premiums.
   C. Post trade allocation of orders with the consent of the eligible person.
   D. Customer funds to be invested by a futures commission merchant or US clearing organization in liquid and readily marketable investments, in addition to the obligations specified in section 4d(2).
4. Other items for Committee consideration; timing of next meeting; other Committee business.

The purpose of this meeting is to solicit the views of the Committee on these agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on issues concerning individuals and industries interested in or affected by financial markets regulated by the Commission. The purposes and objectives of the Advisory Committee are more fully set forth in the April 15, 1997 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, CFTC Commissioner David D. Spears, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Ms. Jennifer Roe, 1155 21st Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Roe in writing at the foregoing address at least three business days before the meeting. Reasonable provisions will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC., on October 23, 1997.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–28685 Filed 10–29–97; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 97–29]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/CPD, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97–29, with attached transmittal, policy justification, and sensitivity of technology.

Dated: October 24, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Defense Security Assistance Agency

Washington, DC 20301–2800

July 24, 1997.

In reply refer to: I–50619/97

Honorable Newt Gingrich,

Speaker of the House of Representatives, Washington, D.C. 20515–6501

Dear Mr. Speaker: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97–29, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the United Arab Emirates for defense articles and services estimated to cost $27 million. Soon after this letter is delivered to your office, we plan to notify the new media.

Sincerely,

Thomas G. Rhame,

Lieutenant General, USA, Director.

Attachments

Same ltr to:

House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 97–29

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) *Prospective Purchaser:* United Arab Emirates.

(ii) *Total Estimated Value:*

Major Defense Equipment* ..	$20 million.
Other	7 million.
Total	27 million.

*As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description of Articles or Services Offered:* Seventy-two RIM–7M (F1 Build) SEASPARROW missiles with one training missile, containers, spare and repair parts, supply support, training, shipboard equipment, support and test equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) *Military Department:* Navy (AAK).

(v) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* none.

(vi) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(vii) *Date Report Delivered to Congress:* July 24, 1997.

Policy Justification

United Arab Emirates—RIM–7M (F1 Build) SEASPARROW Missiles

The Government of the United Arab Emirates has requested the purchase of 72 RIM–7M (F1 Build) SEASPARROW missile with one training missile, containers, spare and repair parts, supply support, training, shipboard equipment, support and test equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $27 million.

This sale is consistent with the stated U.S. policy of assisting friendly nations to provide for their own defense by allowing the transfer of reasonable amounts of defense articles and services. The platform for these surfaced-launched, anti-aircraft missiles will be the two Kortenaer class frigates being obtained by the UAE from the Netherlands.

The United Arab Emirates will have no difficulty absorbing these missiles into its inventory for use in the defense of its coastline and surrounding islands.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Company, Lowell, Massachusetts and Hughes Missile System Company, Tucson, Arizona. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale may require the assignment of three to five contractor representatives to support this program for two years.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 97–29

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex—Item No. vi

(vi) *Sensitivity of Technology:*

1. The external view of the RIM–7M (F1 Build) SEASPARROW missile is Unclassified and not sensitive. The SEASPARROW missile does have the following classified components, including applicable technical equipment, documentation, and manuals:

a. Guidance and Control Section.	Confidential.
b. Rocket Motor	Confidential.
c. Safety and Arming Device.	Confidential.
d. Fuzing hardware	Confidential.
e. Fuzing frequency/characteristics.	Secret.
f. Exportable parametric threat data programmed into ECM/ECCM software packet.	Secret.
g. Documentation*	Confidential.

*Manuals and technical documents are those necessary for Organizational and Intermediate level maintenance.

2. If a technologically advanced were to obtain knowledge of the specific hardware in this sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 97–28687 Filed 10–29–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 97–28]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/CPD, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97–28, with attached transmittal, policy justification, and sensitivity of technology.

Dated: October 24, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Defense Security Assistance Agency

July 24, 1997

In reply refer to: I–50620/97

Honorable Newt Gingrich,
Speaker of the House of Representatives, Washington, D.C. 20515–6501

Dear Mr. Speaker: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97–28, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the United Arab Emirates for defense articles and services estimated to cost $90 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame,

Lieutenant General, USA, Director.

Attachments, Same Ltr to:
House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 97–28

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) *Prospective Purchaser:* United Arab Emirates.

(ii) *Total Estimated Value:*

Major Defense Equipment* ...	$36 million.
Other	54 million.
Total	90 million.

*As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description of Articles or Services Offered:* Twenty-four RGM–84G–4 HARPOON missiles with containers, maintenance training and equipment, spare and repair parts, training, shipboard equipment, support and test equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) *Military Department:* Navy (AAH)

(v) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* none

(vi) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(vii) *Date Report Delivered to Congress:* July 24, 1997.

Policy Justification

United Arab Emirates—HARPOON Missiles

The Government of the United Arab Emirates (UAE) has requested the purchase of 24 RGM–84G–4 HARPOON missiles with containers, maintenance training and equipment, spare and repair parts, training, shipboard equipment, support and test equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $90 million.

This sale is consistent with the stated U.S. policy of assisting friendly nations to provide for their own defense by allowing the transfer of reasonable amounts of defense articles and services. The platform for these anti-ship missiles will be the two Kortenaer class frigates being obtained by the UAE from the Netherlands.

The United Arab Emirates will have no difficulty absorbing these missiles into its inventory for use in the defense of its coastline and surrounding islands.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be McDonnell Douglas Aerospace, Saint Louis, Missouri. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale may require the assignment of three to five contractor representatives to support this program for two years.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 97–28

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex—Item No. vi

(v) *Sensitivity of Technology:*

1. The RGM–84G–4 HARPOON missile contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals:

a. Radar seeker.

b. Missile characteristics and performance data.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 97–28688 Filed 10–29–97; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 97–26]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/CPD, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97–26, with attached transmittal, policy justification, and sensitivity of technology.

Dated: October 24, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Defense Security Assistance Agency

July 24, 1997

In reply refer to: I–50410/97

Honorable Newt Gingrich,
Speaker of the House of Representatives, Washington, DC 20515–6501.

Dear Mr. Speaker: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97–26, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $479 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame,

Lieutenant General, USA, Director.

Attachments
Same ltr to:
House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 97–26

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) *Prospective Purchase:* Taipei Economic and Cultural Representative Office in the United States (TECRO).

(ii) *Total Estimated Value:*

Major Defense Equipment* ..	$341 million.
Other	138 million.
Total	479 million.

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description of Articles or Services Offered:* Twenty-one AH–1W Super Cobra helicopters, spare and repair parts,

engineering technical assistance, support and test equipment, training, publications contractor engineering technical and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Navy (SCP, Amendment 6).

(v) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vi) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(vii) *Date Report Delivered to Congress:* July 24, 1997.

Policy Justification

Taipei Economic and Cultural Representative Office (TECRO) in the United States—AH–1W Super Cobra Helicopters

The Taipei Economic and Cultural Representative Office (TECRO) in the United States has requested the purchase of 21 AH–1W Super Cobra helicopters, spare and repair parts, engineering technical assistance, support and test equipment, training, publications, contractor engineering technical and logistics support services, and other related elements of logistics support. The estimated cost is $479 million.

This sale is consistent with United States law and policy, as expressed in Public Law 96–8.

The recipient will use these helicopters primarily to conduct military exercises for purpose of self-defense and military preparedness. The recipient will have no difficulty absorbing these additional helicopters into its armed forces.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Bell Helicopter, Fort Worth, Texas. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives in-country.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 97–26

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex—Item No. vi

(vi) *Sensitivity of Technology:*

1. The AH–1W Super Cobra Helicopter and associated systems, including operations manuals and maintenance publications, are unclassified. The following components are classified:

a. The AN/APR–44(V)1 radar warning system hardware is unclassified. After software (parametric threat data) is incorporated into the system, it is then classified Secret. Publications and personnel training related to this equipment are classified Confidential.

b. The AN/APR–39 Radar Signal Detecting Set is Confidential when it is loaded and classified threat warning parameters.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 97–28689 Filed 10–29–97; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE/CHAMPUS; FY98 DRG Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of DRG revised rates.

SUMMARY: This notice provides the updated adjusted standardized amounts, DRG relative weights, outlier thresholds, and beneficiary cost-share per diem rates to be used for FY98 under the TRICARE/CHAMPUS DRG-based payment system. It also describes the changes made to the TRICARE/CHAMPUS DRG-based payment system in order to conform to changes made to the Medicare Prospective Payment System (PPS).

EFFECTIVE DATES: The rates and weights and Medicare PPS changes which affect the TRICARE/CHAMPUS DRG-based payment system contained in this notice are effective for admissions occurring on or after October 1, 1997.

ADDRESSES: TRICARE Support Office (TSO), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Marty Maxey, Program Development Branch, TSO, telephone (303) 361–1227.

To obtain copies of this document, see the **ADDRESSES** section above. Questions regarding payment of specific claims under the TRICARE/CHAMPUS DRG-Based payment system should be addressed to the appropriate TRICARE/CHAMPUS contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987 (52 FR 32992) set forth the basic procedures used under the TRICARE/CHAMPUS DRG-based payment system. This was subsequently amended by final rules published August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), May 30, 1990 (55 FR 21883), and October 22, 1990 (55 FR 42560).

An explicit tenet of these final rules, and one based on the statute authorizing the use of DRGs by TRICARE/CHAMPUS, is that the TRICARE/CHAMPUS DRG-based payment system is modeled on the Medicare PPS, and that, whenever practicable, the TRICARE/CHAMPUS system will follow the same rules that apply to the Medicare PPS. The Health Care Financing Administration (HCFA) publishes these changes annually in the **Federal Register** and discusses in detail the impact of the changes.

In addition, this notice updates the rates and weights in accordance with our previous final rules. The actual changes we are making, along with a description of their relationship to the Medicare PPS, are detailed below.

I. Medicare PPS Changes Which Affect the TRICARE/CHAMPUS DRG-Based Payment System

Following is a discussion of the changes HCFA has made to the Medicare PPS which affect the TRICARE/CHAMPUS DRG-based payment system

A. DRG Classifications

Under both the Medicare PPS and the TRICARE/CHAMPUS DRG-based payment system, cases are classified into the appropriate DRG by a Grouper program. The Grouper classifies each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). The Grouper used for the TRICARE/CHAMPUS DRG-based payment system is the same as the current Medicare Grouper with two modifications. The TRICARE/CHAMPUS system has replaced Medicare DRG 435 with two age-based DRGs (900 and 901), and we have implemented thirty-four (34) neonatal DRGs in place of Medicare DRGs 385 through 390. Grouping for all other DRGs under the TRICARE/CHAMPUS system is identical to the Medicare PPS.

For FY98, HCFA will implement a number of classification changes, including surgical hierarchy changes, revisions to the Major Problem Diagnosis List, and refinements to the Complications and Comorbidities (CC) List. In addition, DRGs 214 and 215 (Back and Neck Procedures) will be replaced with five new DRGs (DRGs 496–500) and DRGs 221 and 222 will be replaced with three new DRGs (DRGs 501–503). The TRICARE/CHAMPUS Grouper will incorporate all changes made to the Medicare Grouper.

B. Wage Index and Medicare Geographic Classification Review Board Guidelines

TRICARE/CHAMPUS will continue to use the same wage index amounts used for the Medicare PPS, including the floor on area wage index. Beginning with FY98, the wage index for an urban hospital may not be lower than the Statewide area rural wage index. In addition, TRICARE/CHAMPUS will duplicate all changes with regard to the wage index for specific hospitals which are redesignated by the Medicare Geographic Classification Review Board.

C. Hospital Market Basket

As outlined in HCFA's August 29, 1997, final rule, the applicable percentage change in the standardized amounts have been frozen at the FY97 levels resulting in a 0 percent increase for FY98.

In connection with the revisions to the hospital market basket, HCFA reestimated the labor-related share of the standardized amounts. Accordingly, effective with TRICARE/CHAMPUS discharges occurring on or after October 1, 1997, the labor-related share of the standardized amount will be 71.1 percent and the nonlabor-related portion will be 28.9 percent.

D. Changes to Outlier Payments

In accordance with HCFA's August 29, 1997, final rule, we will eliminate payment for day outliers, referred to as long stay outliers under TRICARE/CHAMPUS, for all cases except neonates and children's hospitals.

Since TRICARE/CHAMPUS does not include capital payments in our DRG-based payments, we will use the thresholds calculated by HCFA for paying cost outliers in the absence of capital prospective payments.

In addition, effective with discharges occurring on or after October 1, 1997, in determining the additional payment for IDME, the IDME adjustment factor will only be applied to the base DRG payment, not the sum of the base DRG payment and any cost outlier payments. The fixed loss cost outlier threshold will be based on the sum of DRG payments and IDME payments for purposes of comparing costs to payment. In determining whether a case meets the cost outlier threshold, we will not standardize the costs of the case to account for IDME.

For FY98, the fixed loss cost outlier threshold is based on the sum of the applicable DRG-based payment rate plus any amounts payable for IDME plus a fixed dollar amount. Thus, for FY98, in order for a case to qualify for cost outlier payments, the costs must exceed the TRICARE/CHAMPUS DRG base payment rate for the DRG plus the IDME payment plus $10,180. The marginal cost factor for cost outliers continues to be 80 percent. The above changes to the cost outlier payments will not be adopted for children's hospitals or neonates at this time.

E. Changes to Indirect Medical Education (IDME) Adjustment

We will adopt Medicare's PPS changes to revise the IDME formula to gradually reduce the current level of IDME adjustment over the next several years. Since the IDME formula used by TRICARE/CHAMPUS does not include disproportionate share hospitals (DSHs), the variables in the formula are different than Medicare's, however, the percentage reductions that will be applied to Medicare's formula will also be applied to the TRICARE/CHAMPUS IDME formula. We will also adopt Medicare's PPS changes as they pertain to the counting and reporting of residents and beds on the Medicare cost reports for purposes of reimbursing hospitals for the TRICARE/CHAMPUS share of IDME costs.

F. Graduate Medical Education

We will adopt Medicare's PPS changes as they pertain to the counting and reporting of residents on the Medicare cost reports for purposes of reimbursing hospitals for the TRICARE/CHAMPUS share of graduate medical education costs.

G. Capital-Related Costs

TRICARE/CHAMPUS reimburses hospitals for our share of hospitals' capital costs on a pass through basis. As provided for in our previous final rules, these annual payments are subject to any reductions which are required for the Medicare PPS. Accordingly, for days of care occurring on or after October 1, 1997, through September 30, 2003, a reduction of 17.68 percent will be applied to all capital payments.

H. Blood Clotting Factor

We will reinstate the add-on payment for the costs of administering blood clotting factor provided to beneficiaries who have hemophilia and who are hospital inpatients for discharges occurring on or after October 1, 1997.

The new payment levels which TRICARE/CHAMPUS will use are:

Factor VIII (antihemophilic factor-human).	$0.76 per unit.
Factor VIII (antihemophilic factor-recombinant).	1.00 per unit.
Factor IX (complex)	0.32 per unit
Other hemophilia clotting factors (e.g., anti-inhibitors).	1.10 per unit.

I. Hospitals Excluded From the Prospective Payment System

TRICARE/CHAMPUS will adopt the changes outlined in HCFA's August 29, 1997, final rule as they apply to hospitals and units excluded from the Medicare PPS.

II. Cost-to-Charge Ratio

For FY98, the cost-to-charge ratio used for the TRICARE/CHAMPUS DRG-based payment system will be 0.5436 which is increased to 0.5536 to account for bad debts. This shall be used to calculate the adjusted standardized amounts and to calculate cost outlier payments, except for children's hospitals. For children's hospital cost outliers, the cost-to-charge ratio used is 0.6027.

III. Updated Rates and Weights

Tables 1 and 2 provide the rates and weights to be used under the TRICARE/CHAMPUS DRG-based payment system during FY98 and which are a result of the change described above. The implementing regulations for the TRICARE/CHAMPUS DRG-based payment system are in 32 CFR Part 199. The rates and weights are also available on the Internet at htt://www.ochampus.mil under the heading of Reports.

As a courtesy, we will provide a separate list of the updated DRG weights that includes the long-stay thresholds for use by MTFs and other non-DoD users of the TRICARE/CHAMPUS DRG weights and rates through TSO's home page. The list will also be found under the Heading of Reports but will specifically indicate the list is for MTFs and non DoD users. Beginning next year, the updated rates and weights will no longer be published in the **Federal Register** and will only be available on-line.

Dated: October 23, 1997.

L.M. Bynum,

Alternate Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M

Table 1
Revised Fiscal Year 1998 CHAMPUS Adjusted Standardized Amounts

Hospital Type	Labor Portion	Non-Labor Portion	Total
Large Urban	2,290.94	931.20	3,222.13
Other Areas	2136.96	868.61	3,005.57

TABLE 2

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	CHILDRENS/NEONATAL LONG STAY THRESHOLD
1	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.8597	8.8	6.1	1	23
2	CRANIOTOMY FOR TRAUMA AGE >17	4.2285	8.2	6.4	1	23
3	CRANIOTOMY AGE 0-17	2.5739	7.2	4.6	1	21
4	SPINAL PROCEDURES	2.6812	8.0	5.1	1	22
5	EXTRACRANIAL VASCULAR PROCEDURES	1.6451	2.9	2.4	1	7
6	CARPAL TUNNEL RELEASE	0.7582*	3.3	2.2	1	26
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.3795	8.0	4.8	1	21
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	1.3175	2.7	2.0	1	8
9	SPINAL DISORDERS & INJURIES	1.5545	9.1	5.7	1	22
10	NERVOUS SYSTEM NEOPLASMS W CC	1.3176	6.5	4.1	1	21
11	NERVOUS SYSTEM NEOPLASMS W/O CC	1.1123	4.4	2.9	1	15
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	1.5353	8.6	5.1	1	22
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.7503	4.8	4.1	1	12
14	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.3798	5.7	4.2	1	18
15	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	0.7769	3.0	2.5	1	8
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.1956	5.6	3.8	1	20
17	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	0.5735	1.7	1.5	1	4
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.9526	5.0	3.8	1	16
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.6831	3.3	2.5	1	10
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	2.2631	8.3	6.0	1	22
21	VIRAL MENINGITIS	0.7022	3.3	2.7	1	8
22	HYPERTENSIVE ENCEPHALOPATHY	1.2941	4.6	3.8	1	13
23	NONTRAUMATIC STUPOR & COMA	0.6763	2.9	2.2	1	9
24	SEIZURE & HEADACHE AGE >17 W CC	0.9028	3.9	2.9	1	12
25	SEIZURE & HEADACHE AGE >17 W/O CC	0.6095	2.8	2.3	1	7
26	SEIZURE & HEADACHE AGE 0-17	0.5174	2.5	1.9	1	6
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3964	4.4	2.8	1	17
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.3001	5.7	3.8	1	20
29	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	0.7788	3.4	2.6	1	10
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	0.6828	3.0	2.0	1	9
31	CONCUSSION AGE >17 W CC	1.0425	3.6	2.6	1	12
32	CONCUSSION AGE >17 W/O CC	0.4817	1.8	1.4	1	4
33	CONCUSSION AGE 0-17	0.3340	1.4	1.2	1	2
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.3723	5.7	3.5	1	20
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.7037	3.3	2.4	1	10
36	RETINAL PROCEDURES	0.8898	1.7	1.4	1	4
37	ORBITAL PROCEDURES	1.6424	3.5	2.1	1	13
38	PRIMARY IRIS PROCEDURES	0.4826*	2.7	1.9	1	17
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	0.5406*	2.0	1.5	1	10
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	0.8696	2.0	1.6	1	5
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	0.3354*	1.6	1.6	1	6
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	0.6838	2.6	2.3	1	6
43	HYPHEMA	0.4119*	4.0	2.9	1	19
44	ACUTE MAJOR EYE INFECTIONS	0.5346	3.3	2.8	1	8
45	NEUROLOGICAL EYE DISORDERS	0.5952	3.2	2.6	1	9
46	OTHER DISORDERS OF THE EYE AGE >17 W CC	1.2151	6.0	3.6	1	20
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	0.6658	2.5	1.9	1	8
48	OTHER DISORDERS OF THE EYE AGE 0-17	0.4655	2.3	2.1	1	5
49	MAJOR HEAD & NECK PROCEDURES	1.7502	3.6	2.9	1	11
50	SIALOADENECTOMY	0.7900	1.4	1.3	1	2

TABLE 2 (CONTINUED)

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	CHILDRENS/NEONATAL LONG STAY THRESHOLD
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	0.8367*	2.9	1.9	1	20
52	CLEFT LIP & PALATE REPAIR	0.7839	1.7	1.5	1	4
53	SINUS & MASTOID PROCEDURES AGE >17	1.1468	3.2	2.4	1	10
54	SINUS & MASTOID PROCEDURES AGE 0-17	0.9395	2.0	1.7	1	5
55	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	1.3818	2.8	1.8	1	9
56	RHINOPLASTY	1.2133	2.7	2.1	1	8
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.9639	2.9	2.5	1	7
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.9489	3.8	3.1	1	11
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.5998	2.6	1.8	1	8
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.5181	1.7	1.4	1	4
61	MYRINGOTOMY W TUBE INSERTION AGE >17	1.1181*	4.5	2.8	1	27
62	MYRINGOTOMY W TUBE INSERTION AGE 0-17	0.7404	1.9	1.5	1	5
63	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.2552	2.3	1.8	1	5
64	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.1501	4.7	3.2	1	17
65	DYSEQUILIBRIUM	0.4621	2.1	1.8	1	5
66	EPISTAXIS	0.5391	3.3	2.8	1	8
67	EPIGLOTTITIS	0.8150	2.3	2.0	1	5
68	OTITIS MEDIA & URI AGE >17 W CC	0.5342	2.9	2.4	1	7
69	OTITIS MEDIA & URI AGE >17 W/O CC	0.5028	2.7	2.3	1	6
70	OTITIS MEDIA & URI AGE 0-17	0.4328	2.7	2.2	1	7
71	LARYNGOTRACHEITIS	0.3001	1.7	1.5	1	3
72	NASAL TRAUMA & DEFORMITY	0.6364*	3.5	2.7	1	27
73	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	0.6371	3.1	2.5	1	8
74	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	0.4751	2.7	2.0	1	7
75	MAJOR CHEST PROCEDURES	3.0874	8.4	6.5	1	23
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.8451	8.9	6.5	1	23
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.3940	4.6	3.4	1	16
78	PULMONARY EMBOLISM	1.5505	6.5	5.7	1	16
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	1.8236	7.9	6.3	1	23
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	0.9702	5.0	4.2	1	13
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.1558	5.3	3.6	1	19
82	RESPIRATORY NEOPLASMS	1.4395	6.1	4.2	1	21
83	MAJOR CHEST TRAUMA W CC	1.0866	4.5	3.6	1	14
84	MAJOR CHEST TRAUMA W/O CC	0.5123	2.3	2.0	1	6
85	PLEURAL EFFUSION W CC	1.4574	6.1	5.2	1	17
86	PLEURAL EFFUSION W/O CC	0.7716	3.3	2.7	1	10
87	PULMONARY EDEMA & RESPIRATORY FAILURE	1.4613	6.1	4.6	1	20
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.0181	4.8	4.0	1	13
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.1147	5.1	4.3	1	13
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.6718	3.7	3.1	1	9
91	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	0.5754	3.2	2.7	1	8
92	INTERSTITIAL LUNG DISEASE W CC	1.3077	5.1	4.2	1	15
93	INTERSTITIAL LUNG DISEASE W/O CC	0.5836	3.8	3.3	1	8
94	PNEUMOTHORAX W CC	1.4460	6.1	4.5	1	20
95	PNEUMOTHORAX W/O CC	0.4535	3.2	2.7	1	8
96	BRONCHITIS & ASTHMA AGE >17 W CC	0.8875	4.1	3.4	1	11
97	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.6038	3.1	2.5	1	8
98	BRONCHITIS & ASTHMA AGE 0-17	0.5006	2.6	2.3	1	6
99	RESPIRATORY SIGNS & SYMPTOMS W CC	0.7217	2.6	2.0	1	7
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	0.5386	1.9	1.6	1	4

TABLE 2 (CONTINUED)

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	CHILDRENS/NEONATAL LONG STAY THRESHOLD
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	0.8832	3.6	2.6	1	11
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.5212	1.9	1.7	1	4
103	HEART TRANSPLANT	-	-	-	-	-
104	CARDIAC VALVE PROCEDURES W CARDIAC CATH	8.4494	10.8	8.4	1	25
105	CARDIAC VALVE PROCEDURES W/O CARDIAC CATH	5.9319	7.4	6.3	1	19
106	CORONARY BYPASS W CARDIAC CATH	5.9878	8.4	7.7	2	17
107	CORONARY BYPASS W/O CARDIAC CATH	4.3544	6.4	5.9	1	12
108	OTHER CARDIOTHORACIC PROCEDURES	5.2652	9.0	6.3	1	23
109	NO LONGER VALID	-	-	-	-	
110	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.4829	8.0	6.4	1	23
111	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.3633	4.8	4.1	1	13
112	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	2.2210	3.2	2.5	1	9
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	4.0669	14.1	10.3	1	27
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	2.6068	13.3	6.5	1	23
115	PRM CARD PACEM IMPL W AMI,HRT FAIL OR SHK,OR AICD LEAD OR GNRTR	4.9350	9.5	5.1	1	22
116	OTH PERM CARD PACEMAK IMPL OR PTCA W CORONARY ARTERY STENT IMPLN	3.0086	3.3	2.6	1	9
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.3887	3.0	2.0	1	10
118	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.8352	3.0	1.9	1	9
119	VEIN LIGATION & STRIPPING	0.9767	2.6	2.2	1	7
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.5517	8.0	5.1	1	22
121	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE	1.7896	5.0	4.0	1	15
122	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE	1.3343	3.4	2.8	1	9
123	CIRCULATORY DISORDERS W AMI, EXPIRED	2.2576	4.0	2.4	1	15
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.3802	3.4	2.6	1	10
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	1.0490	2.2	1.9	1	5
126	ACUTE & SUBACUTE ENDOCARDITIS	3.3492	10.2	7.7	1	24
127	HEART FAILURE & SHOCK	1.1572	4.9	3.8	1	14
128	DEEP VEIN THROMBOPHLEBITIS	0.8194	5.4	4.8	1	12
129	CARDIAC ARREST, UNEXPLAINED	2.0354	2.8	1.8	1	8
130	PERIPHERAL VASCULAR DISORDERS W CC	1.1246	6.1	4.9	1	17
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.7243	4.3	3.6	1	13
132	ATHEROSCLEROSIS W CC	0.6660	2.4	2.0	1	6
133	ATHEROSCLEROSIS W/O CC	0.6086	2.4	1.9	1	6
134	HYPERTENSION	0.5398	2.5	2.1	1	6
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	0.6206	2.3	1.8	1	6
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	0.7074	2.5	2.0	1	7
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	0.4027	1.8	1.6	1	4
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.7297	3.0	2.4	1	8
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.4733	2.1	1.7	1	5
140	ANGINA PECTORIS	0.5683	2.1	1.8	1	5
141	SYNCOPE & COLLAPSE W CC	0.6440	2.8	2.2	1	7
142	SYNCOPE & COLLAPSE W/O CC	0.5325	2.0	1.7	1	5
143	CHEST PAIN	0.5129	1.7	1.5	1	3
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.2947	5.2	3.8	1	17
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.6499	2.4	2.0	1	6
146	RECTAL RESECTION W CC	2.7656	8.2	7.5	2	16
147	RECTAL RESECTION W/O CC	2.1219	6.7	6.3	2	12
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.3843	10.2	8.6	1	25
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.6973	5.9	5.2	1	14
150	PERITONEAL ADHESIOLYSIS W CC	2.3126	8.5	7.1	1	23

TABLE 2 (CONTINUED)

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	CHILDRENS/NEONATAL LONG STAY THRESHOLD
151	PERITONEAL ADHESIOLYSIS W/O CC	1.4736	5.0	4.0	1	15
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.8466	7.6	6.8	1	17
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.1616	4.8	4.1	1	13
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	3.9139	10.5	7.8	1	24
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	1.5240	3.4	2.7	1	9
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	1.2375	5.2	3.9	1	16
157	ANAL & STOMAL PROCEDURES W CC	1.1156	4.4	3.3	1	14
158	ANAL & STOMAL PROCEDURES W/O CC	0.6791	2.4	2.0	1	6
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	1.3927	4.4	3.2	1	13
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	0.9049	2.7	2.2	1	7
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	0.9979	2.2	1.8	1	5
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	0.6872	1.8	1.5	1	4
163	HERNIA PROCEDURES AGE 0-17	0.6196	1.8	1.5	1	4
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.0290	6.8	5.9	1	16
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.1989	4.4	3.9	1	11
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.0446	3.3	2.8	1	8
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	0.7793	2.1	1.9	1	4
168	MOUTH PROCEDURES W CC	1.4189	4.2	3.4	1	12
169	MOUTH PROCEDURES W/O CC	0.9697	2.0	1.7	1	5
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	3.0532	9.8	7.4	1	24
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.2173	3.8	3.0	1	11
172	DIGESTIVE MALIGNANCY W CC	1.5793	6.0	4.2	1	21
173	DIGESTIVE MALIGNANCY W/O CC	1.0077	6.0	2.8	1	19
174	G.I. HEMORRHAGE W CC	0.9958	3.7	3.0	1	10
175	G.I. HEMORRHAGE W/O CC	0.4911	2.3	1.9	1	6
176	COMPLICATED PEPTIC ULCER	1.0561	4.6	3.3	1	15
177	UNCOMPLICATED PEPTIC ULCER W CC	0.8522	3.1	2.6	1	8
178	UNCOMPLICATED PEPTIC ULCER W/O CC	0.6793	2.7	2.3	1	7
179	INFLAMMATORY BOWEL DISEASE	1.0090	5.3	4.4	1	14
180	G.I. OBSTRUCTION W CC	1.0000	5.1	3.7	1	17
181	G.I. OBSTRUCTION W/O CC	0.5597	3.1	2.6	1	8
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC	0.7245	3.5	2.7	1	10
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	0.5825	2.6	2.1	1	6
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	0.3355	2.3	1.9	1	5
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	0.7587	3.1	2.3	1	9
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	0.5041	2.1	1.8	1	4
187	DENTAL EXTRACTIONS & RESTORATIONS	0.8551	3.1	2.3	1	9
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.1028	4.7	3.7	1	14
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.7416	3.4	2.3	1	9
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	0.8020	3.4	2.2	1	10
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC	4.4163	12.6	8.8	1	25
192	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.8488	6.7	5.9	1	15
193	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC	2.9408	9.7	7.9	1	24
194	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC	2.2152	5.5	4.5	1	18
195	CHOLECYSTECTOMY W C.D.E. W CC	2.1195	6.3	5.6	1	16
196	CHOLECYSTECTOMY W C.D.E. W/O CC	1.8104	4.5	3.9	1	11
197	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC	2.1395	6.6	5.5	1	16
198	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC	1.2851	3.7	3.3	1	9
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.1628	7.6	5.7	1	22
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	3.0793	7.6	4.8	1	21

TABLE 2 (CONTINUED)

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	CHILDRENS/NEONATAL LONG STAY THRESHOLD
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.9631	11.2	8.2	1	25
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.6142	6.2	4.6	1	21
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.4145	5.9	4.2	1	21
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.2565	5.6	4.2	1	17
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	1.4179	5.8	4.3	1	19
206	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	0.6458	3.1	2.4	1	9
207	DISORDERS OF THE BILIARY TRACT W CC	0.9668	3.9	2.9	1	12
208	DISORDERS OF THE BILIARY TRACT W/O CC	0.5621	2.0	1.7	1	4
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY	2.6545	5.0	4.6	1	9
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	2.4137	7.8	6.5	1	20
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.3957	4.3	3.8	1	10
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.4297	4.7	3.3	1	15
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	2.0685	6.3	4.9	1	20
214	NO LONGER VALID	-	-	-	-	-
215	NO LONGER VALID	-	-	-	-	-
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	2.0800	6.0	4.2	1	21
217	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	2.9807	10.3	6.5	1	23
218	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC	1.7413	4.9	3.8	1	14
219	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	1.1170	2.8	2.4	1	6
220	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	0.9085	2.0	1.6	1	5
221	NO LONGER VALID	-	-	-	-	-
222	NO LONGER VALID	-	-	-	-	-
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	0.8913	1.9	1.6	1	4
224	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	0.9550	1.9	1.6	1	4
225	FOOT PROCEDURES	1.0723	3.0	2.1	1	8
226	SOFT TISSUE PROCEDURES W CC	1.3113	4.2	2.9	1	15
227	SOFT TISSUE PROCEDURES W/O CC	0.8896	2.2	1.7	1	5
228	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	1.1211	2.0	1.7	1	5
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	0.8076	1.6	1.4	1	3
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	0.8896	2.8	1.8	1	9
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	1.2683	2.9	2.1	1	8
232	ARTHROSCOPY	0.7881	2.0	1.7	1	5
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	2.4428	7.4	5.0	1	21
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	1.3113	3.4	2.5	1	10
235	FRACTURES OF FEMUR	0.7670	5.6	3.6	1	20
236	FRACTURES OF HIP & PELVIS	0.9165	7.3	5.0	1	22
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.5666	3.4	2.7	1	11
238	OSTEOMYELITIS	1.5107	8.6	5.9	1	22
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	1.6166	7.7	5.3	1	22
240	CONNECTIVE TISSUE DISORDERS W CC	1.4422	6.3	4.3	1	21
241	CONNECTIVE TISSUE DISORDERS W/O CC	0.7665	4.0	3.1	1	12
242	SEPTIC ARTHRITIS	0.5413	3.5	2.9	1	10
243	MEDICAL BACK PROBLEMS	0.6702	3.8	2.9	1	11
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	0.9348	5.5	4.5	1	17
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.8439	5.2	3.8	1	18
246	NON-SPECIFIC ARTHROPATHIES	0.5713	4.2	3.3	1	26
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.5883	2.8	2.2	1	8
248	TENDONITIS, MYOSITIS & BURSITIS	0.6136	3.3	2.5	1	10
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.8934	5.6	3.2	1	20
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	0.7287	2.5	2.1	1	6

TABLE 2 (CONTINUED)

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	CHILDRENS/NEONATAL LONG STAY THRESHOLD
251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	0.6448	2.2	1.7	1	6
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	0.5972	1.5	1.3	1	3
253	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC	0.9960	5.6	3.8	1	19
254	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	0.4360	2.6	2.0	1	7
255	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	0.4859	2.4	1.5	1	6
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	0.6166	2.9	2.1	1	8
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC	1.2922	2.9	2.4	1	7
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.9790	2.1	1.9	1	4
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	0.8660	1.8	1.5	1	4
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.8447	1.4	1.3	1	2
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	1.2264	1.7	1.4	1	4
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	0.8751	2.6	1.9	1	8
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	2.3040	11.9	8.6	1	25
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.5918	8.0	5.1	1	22
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.9714	7.0	4.9	1	21
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O C	0.9821	3.1	2.1	1	9
267	PERIANAL & PILONIDAL PROCEDURES	1.0774	2.8	1.8	1	8
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	1.1885	3.3	2.3	1	11
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.5198	5.9	3.7	1	20
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	0.8474	3.0	2.1	1	9
271	SKIN ULCERS	1.2729	9.7	6.6	1	23
272	MAJOR SKIN DISORDERS W CC	1.2708	5.0	3.7	1	17
273	MAJOR SKIN DISORDERS W/O CC	0.6251	4.8	3.4	1	16
274	MALIGNANT BREAST DISORDERS W CC	1.0393	5.4	3.4	1	20
275	MALIGNANT BREAST DISORDERS W/O CC	0.5882*	3.9	2.5	1	27
276	NON-MALIGANT BREAST DISORDERS	0.5955	4.4	3.3	1	13
277	CELLULITIS AGE >17 W CC	0.8796	5.0	4.2	1	13
278	CELLULITIS AGE >17 W/O CC	0.5596	3.7	3.1	1	9
279	CELLULITIS AGE 0-17	0.3986	2.8	2.3	1	7
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	0.5601	2.4	2.1	1	6
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.5554	2.3	1.8	1	6
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	0.4558	2.0	1.7	1	4
283	MINOR SKIN DISORDERS W CC	0.7451	4.4	3.4	1	13
284	MINOR SKIN DISORDERS W/O CC	0.4390	2.8	2.1	1	8
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	1.9686	8.9	7.5	1	23
286	ADRENAL & PITUITARY PROCEDURES	2.5322	6.1	5.2	1	14
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	1.9598	10.3	7.5	1	24
288	O.R. PROCEDURES FOR OBESITY	1.9143	4.2	3.9	1	8
289	PARATHYROID PROCEDURES	0.9234	2.7	2.0	1	7
290	THYROID PROCEDURES	0.9311	1.7	1.4	1	3
291	THYROGLOSSAL PROCEDURES	0.7372*	2.2	1.7	1	8
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	2.9591	9.2	6.5	1	23
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.2297*	5.6	3.8	1	29
294	DIABETES AGE >35	0.8024	4.6	3.4	1	13
295	DIABETES AGE 0-35	0.5648	3.0	2.6	1	7
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	1.0176	4.8	3.5	1	15
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.5596	3.4	2.4	1	10
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	0.3245	2.3	2.0	1	5
299	INBORN ERRORS OF METABOLISM	1.1724	5.0	3.3	1	17
300	ENDOCRINE DISORDERS W CC	0.9008	4.2	3.1	1	13

TABLE 2 (CONTINUED)

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	CHILDRENS/NEONATAL LONG STAY THRESHOLD
301	ENDOCRINE DISORDERS W/O CC	0.5222	2.5	2.1	1	6
302	KIDNEY TRANSPLANT	3.4181	8.4	7.7	2	17
303	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.7103	7.5	6.6	1	16
304	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC	2.0031	6.5	5.0	1	19
305	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.2175	3.7	3.1	1	10
306	PROSTATECTOMY W CC	0.9327	2.6	2.1	1	7
307	PROSTATECTOMY W/O CC	0.6455*	2.5	2.1	1	15
308	MINOR BLADDER PROCEDURES W CC	1.6637	4.5	3.4	1	16
309	MINOR BLADDER PROCEDURES W/O CC	1.0405	2.4	2.0	1	6
310	TRANSURETHRAL PROCEDURES W CC	1.0057	2.6	2.2	1	6
311	TRANSURETHRAL PROCEDURES W/O CC	0.7893	1.9	1.7	1	4
312	URETHRAL PROCEDURES, AGE >17 W CC	0.9732*	4.7	3.1	1	27
313	URETHRAL PROCEDURES, AGE >17 W/O CC	0.5783*	2.3	1.8	1	13
314	URETHRAL PROCEDURES, AGE 0-17	0.4916*	2.3	2.3	1	26
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.1689	6.4	4.2	1	21
316	RENAL FAILURE	1.2729	5.8	4.4	1	19
317	ADMIT FOR RENAL DIALYSIS	0.5489*	2.9	2.0	1	20
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	2.3064	7.3	4.8	1	21
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	0.5808*	2.8	2.0	1	24
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	0.8409	4.5	3.5	1	12
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.5479	3.1	2.6	1	8
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	0.4958	3.3	2.8	1	8
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	0.7071	2.4	1.9	1	6
324	URINARY STONES W/O CC	0.3971	1.6	1.4	1	3
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	0.6842	2.8	2.0	1	8
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	0.6429	2.4	1.8	1	7
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	0.3624	1.3	1.2	1	2
328	URETHRAL STRICTURE AGE >17 W CC	0.6878*	3.9	2.9	1	27
329	URETHRAL STRICTURE AGE >17 W/O CC	0.5080*	2.3	1.9	1	17
330	URETHRAL STRICTURE AGE 0-17	0.3167*	1.6	1.6	1	9
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	1.0420	5.6	3.7	1	18
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.6431	3.0	2.2	1	9
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	0.5826	3.2	2.2	1	9
334	MAJOR MALE PELVIC PROCEDURES W CC	1.8695	4.5	4.1	1	8
335	MAJOR MALE PELVIC PROCEDURES W/O CC	1.4631	3.6	3.4	1	6
336	TRANSURETHRAL PROSTATECTOMY W CC	0.9218	2.3	2.0	1	5
337	TRANSURETHRAL PROSTATECTOMY W/O CC	0.7465	2.1	1.8	1	4
338	TESTES PROCEDURES, FOR MALIGNANCY	1.0950*	5.1	3.3	1	27
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	0.8267	1.9	1.6	1	4
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	0.5642	1.2	1.1	1	1
341	PENIS PROCEDURES	1.3808	1.9	1.6	1	4
342	CIRCUMCISION AGE >17	0.8511*	3.6	2.9	1	27
343	CIRCUMCISION AGE 0-17	0.1529*	1.7	1.7	1	6
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.4437	3.6	2.5	1	10
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	0.8552*	3.8	2.7	1	6
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	0.8105	4.4	3.8	1	11
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	0.4603*	3.0	2.2	1	25
348	BENIGN PROSTATIC HYPERTROPHY W CC	0.6958*	4.5	3.3	1	17
349	BENIGN PROSTATIC HYPERTROPHY W/O CC	0.4154*	2.7	2.1	1	7
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	0.6370	3.6	2.9	1	10

TABLE 2 (CONTINUED)

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	CHILDRENS/NEONATAL LONG STAY THRESHOLD
351	STERILIZATION, MALE	0.2347*	1.3	1.3	1	5
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	0.6263*	4.0	2.9	1	27
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	1.8025	4.9	4.2	1	12
354	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	1.4145	4.4	4.0	1	9
355	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	0.9540	2.8	2.6	1	5
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	0.9346	2.4	2.1	1	5
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	2.0098	6.5	5.4	1	17
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.2026	3.3	3.0	1	7
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	0.9889	2.6	2.4	1	5
360	VAGINA, CERVIX & VULVA PROCEDURES	0.9536	2.5	2.2	1	5
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1.1061	2.7	2.2	1	7
362	ENDOSCOPIC TUBAL INTERRUPTION	0.3000*	1.4	1.4	1	5
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	0.7701	2.3	2.1	1	5
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY	0.6670	2.4	2.0	1	6
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.3098	4.1	3.2	1	12
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	0.9638	4.1	3.2	1	13
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.5742	1.5	1.3	1	3
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	0.5733	2.9	2.5	1	6
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	0.5827	2.1	1.8	1	5
370	CESAREAN SECTION W CC	1.0359	4.2	3.6	1	8
371	CESAREAN SECTION W/O CC	0.8180	3.1	3.0	1	5
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	0.5504	2.4	2.1	1	5
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.4183	1.8	1.6	1	3
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C	0.7287	2.1	1.9	1	4
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	0.6419	2.1	1.8	1	4
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	0.5588	3.0	2.5	1	8
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	1.8709	5.0	2.6	1	19
378	ECTOPIC PREGNANCY	0.8840	2.2	1.9	1	5
379	THREATENED ABORTION	0.5348	3.4	2.4	1	10
380	ABORTION W/O D&C	0.4078	1.6	1.4	1	3
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	0.5002	1.4	1.3	1	2
382	FALSE LABOR	0.2383	1.6	1.3	1	3
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	0.4155	2.8	2.2	1	7
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	0.4220	2.6	1.9	1	7
385	NO LONGER VALID	-	-	-	-	-
386	NO LONGER VALID	-	-	-	-	-
387	NO LONGER VALID	-	-	-	-	-
388	NO LONGER VALID	-	-	-	-	-
389	NO LONGER VALID	-	-	-	-	-
390	NO LONGER VALID	-	-	-	-	-
391	NORMAL NEWBORN	0.1104	1.7	1.6	1	3
392	SPLENECTOMY AGE >17	3.2656	8.7	6.6	1	23
393	SPLENECTOMY AGE 0-17	1.2323	4.6	3.7	1	12
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	1.2134	4.1	3.2	1	13
395	RED BLOOD CELL DISORDERS AGE >17	1.0042	5.0	3.5	1	17
396	RED BLOOD CELL DISORDERS AGE 0-17	0.5915	3.5	2.7	1	10
397	COAGULATION DISORDERS	1.3894	4.9	3.2	1	16
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.5253	6.0	4.4	1	18
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	0.5948	3.7	3.0	1	11
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	3.0607	8.3	5.3	1	22

TABLE 2 (CONTINUED)

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	CHILDRENS/NEONATAL LONG STAY THRESHOLD
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	3.4592	12.2	8.7	1	25
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	1.0548	4.3	2.7	1	15
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	2.4326	8.2	5.7	1	22
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	0.9807	4.1	3.0	1	14
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	3.6244	13.1	7.6	1	24
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	2.6012	7.6	5.3	1	22
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.1654	3.1	2.7	1	8
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	2.1894	6.0	3.9	1	20
409	RADIOTHERAPY	1.0210	3.9	3.2	1	10
410	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	0.9978	3.2	2.6	1	9
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY	0.4214*	2.3	1.8	1	16
412	HISTORY OF MALIGNANCY W ENDOSCOPY	0.5175*	3.4	2.4	1	23
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	2.2412	8.6	5.2	1	22
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	0.6761	3.3	2.5	1	11
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	4.1354	12.6	8.6	1	25
416	SEPTICEMIA AGE >17	1.8852	6.8	5.2	1	22
417	SEPTICEMIA AGE 0-17	0.7033	4.0	3.2	1	11
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	1.0464	5.3	4.1	1	16
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	0.9118	4.6	3.6	1	14
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	0.4341	2.4	2.2	1	5
421	VIRAL ILLNESS AGE >17	0.5924	3.0	2.6	1	7
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	0.3837	2.5	2.2	1	5
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.3656	6.0	4.1	1	19
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.4581*	16.8	9.9	1	35
425	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	0.6195	3.9	2.6	1	13
426	DEPRESSIVE NEUROSES	0.6185	6.0	3.8	1	20
427	NEUROSES EXCEPT DEPRESSIVE	0.5953	5.3	3.6	1	20
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL	0.8971	7.0	5.7	1	22
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	1.4172	14.1	7.7	1	24
430	PSYCHOSES	0.8903	7.8	5.9	1	22
431	CHILDHOOD MENTAL DISORDERS	1.0260	9.1	6.7	1	23
432	OTHER MENTAL DISORDER DIAGNOSES	0.7647*	5.9	3.7	1	28
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.5280	5.5	3.7	1	20
434	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC	0.7126	4.4	3.5	1	13
435	NO LONGER VALID	-	-	-	-	-
436	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	0.8399	12.4	8.1	1	25
437	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	0.8594	10.9	9.0	1	26
438	NO LONGER VALID	-	-	-	-	-
439	SKIN GRAFTS FOR INJURIES	1.7210	5.6	4.1	1	21
440	WOUND DEBRIDEMENTS FOR INJURIES	1.7822	6.3	4.2	1	21
441	HAND PROCEDURES FOR INJURIES	0.8679	2.2	1.8	1	5
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.4381	7.6	4.5	1	21
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	1.1022	2.9	2.1	1	9
444	TRAUMATIC INJURY AGE >17 W CC	0.6623	3.2	2.4	1	10
445	TRAUMATIC INJURY AGE >17 W/O CC	0.7389	2.9	2.1	1	9
446	TRAUMATIC INJURY AGE 0-17	0.3789	2.0	1.8	1	4
447	ALLERGIC REACTIONS AGE >17	0.5748	2.7	1.9	1	7
448	ALLERGIC REACTIONS AGE 0-17	0.3964	2.4	2.2	1	5
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	0.7246	2.7	2.0	1	7
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	0.4301	1.9	1.5	1	4

TABLE 2 (CONTINUED)

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	CHILDRENS/NEONATAL LONG STAY THRESHOLD
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	0.4745	2.1	1.7	1	5
452	COMPLICATIONS OF TREATMENT W CC	0.8790	4.0	2.9	1	13
453	COMPLICATIONS OF TREATMENT W/O CC	0.4693	2.8	2.0	1	8
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	0.8477	2.7	1.8	1	7
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	0.3886	1.4	1.2	1	2
456	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.7396*	7.3	3.7	1	28
457	EXTENSIVE BURNS W/O O.R. PROCEDURE	1.5860*	4.9	2.5	1	26
458	NON-EXTENSIVE BURNS W SKIN GRAFT	3.1197	15.1	10.2	1	27
459	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	1.5588*	9.3	6.5	1	30
460	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	0.6511	3.8	2.6	1	13
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	1.7482	9.4	4.0	1	21
462	REHABILITATION	1.7007	13.6	9.2	1	26
463	SIGNS & SYMPTOMS W CC	1.0541	5.7	3.3	1	20
464	SIGNS & SYMPTOMS W/O CC	0.7491	5.5	2.6	1	19
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.5858*	3.8	2.2	1	26
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	1.2589	10.0	4.4	1	21
467	OTHER FACTORS INFLUENCING HEALTH STATUS	0.4238	2.6	1.7	1	7
468	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3.0453	9.0	4.9	1	21
469	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	-	-	-	-	-
470	UNGROUPABLE	-	-	-	-	-
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	3.8905	7.1	6.4	1	14
472	EXTENSIVE BURNS W O.R. PROCEDURE	10.2429*	24.2	11.8	1	51
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	7.2776	19.2	11.9	1	28
474	NO LONGER VALID	-	-	-	-	-
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	4.4175	10.1	7.0	1	24
476	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.2234*	12.7	9.5	1	34
477	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.5772	5.5	3.6	1	20
478	OTHER VASCULAR PROCEDURES W CC	2.7774	6.0	4.4	1	21
479	OTHER VASCULAR PROCEDURES W/O CC	1.7948	3.3	2.6	1	9
480	LIVER TRANSPLANT	-	-	-	-	-
481	BONE MARROW TRANSPLANT	14.5958	32.5	24.6	1	41
482	TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES	4.4378	9.8	8.2	1	24
483	TRACHEOSTOMY EXCEPT FOR FACE,MOUTH & NECK DIAGNOSES	20.4634	37.3	30.8	4	47
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.7762*	15.4	10.6	1	33
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT T	5.2469	10.8	9.2	1	26
486	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	4.8904	11.5	9.2	1	26
487	OTHER MULTIPLE SIGNIFICANT TRAUMA	2.1519	6.4	4.3	1	21
488	HIV W EXTENSIVE O.R. PROCEDURE	4.5078*	18.0	12.1	1	38
489	HIV W MAJOR RELATED CONDITION	3.8757	12.3	8.5	1	25
490	HIV W OR W/O OTHER RELATED CONDITION	1.0029	4.1	3.5	1	10
491	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY	2.0894	2.9	2.4	1	7
492	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	3.4048	10.9	6.4	1	23
493	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.8798	4.3	3.3	1	14
494	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.1533	2.1	1.8	1	5
495	LUNG TRANSPLANT	9.5171*	17.9	14.8	1	42
496	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	5.4776	7.6	6.9	1	16
497	SPINAL FUSION W CC	2.9036	4.4	3.6	1	12
498	SPINAL FUSION W/O CC	2.0052	2.7	2.3	1	6
499	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC	1.4456	3.5	2.8	1	9
500	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC	1.1183	2.2	1.8	1	5

TABLE 2 (CONTINUED)

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	CHILDRENS/NEONATAL LONG STAY THRESHOLD
501	KNEE PROCEDURES W PDX OF INFECTION W CC	2.5660*	11.3	8.7	1	23
502	KNEE PROCEDURES W PDX OF INFECTION W/O CC	1.6004*	7.1	5.9	1	9
503	KNEE PROCEDURES W/O PDX OF INFECTION	1.3599	2.5	2.0	1	6
600	NEONATE, DIED W/IN ONE DAY OF BIRTH	0.5269	1.0	1.0	1	1
601	NEONATE, TRANSFERRED <5 DAYS OLD	0.4914	1.6	1.4	1	3
602	NEONATE, BIRTHWT <750G, DISCHARGED ALIVE	29.3011	87.5	58.6	1	75
603	NEONATE, BIRTHWT <750G, DIED	9.2260#	16.0	7.9	1	24
604	NEONATE, BIRTHWT 750-999G, DISCHARGED ALIVE	20.0060	66.3	56.6	8	73
605	NEONATE, BIRTHWT 750-999G, DIED	11.4290#	30.2	20.1	2	36
606	NEONATE, BIRTHWT 1000-1499G, W SIGNIF OR PROC, DISCHARGED ALIVE	19.8902#	69.1	60.5	13	77
607	NEONATE, BIRTHWT 1000-1499G, W/O SIGNIF OR PROC, DISCHARGED ALIV	9.9239	38.7	31.3	2	48
608	NEONATE, BIRTHWT 1000-1499G, DIED	5.7695#	9.2	8.1	2	22
609	NEONATE, BIRTHWT 1500-1999G, W SIGNIF OR PROC, W MULT MAJOR PROB	10.5680#	34.6	32.1	13	47
610	NEONATE, BIRTHWT 1500-1999G, W SIGNIF OR PROC, W/O MULT MAJOR PR	5.4273#	27.0	24.3	6	40
611	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W MULT MAJOR PR	6.3835	26.4	23.1	4	40
612	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W MAJOR PROB	3.8705	19.5	16.2	1	33
613	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W MINOR PROB	3.7966	19.2	16.4	2	33
614	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W OTHER PROB	1.9413	10.3	8.8	1	25
615	NEONATE, BIRTHWT 2000-2499G, W SIGNIF OR PROC, W MULT MAJOR PROB	6.2824#	21.0	18.4	4	35
616	NEONATE, BIRTHWT 2000-2499G, W SIGNIF OR PROC, W/O MULT MAJOR PR	5.6299#	24.2	18.5	3	34
617	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W MULT MAJOR PR	5.1759	15.8	13.6	2	30
618	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W MAJOR PROB	2.4646	10.1	7.9	1	24
619	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W MINOR PROB	1.4533	7.2	5.8	1	22
620	NO LONGER VALID	-	-	-	-	-
621	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W OTHER PROB	0.3916	3.4	2.6	1	10
622	NEONATE, BIRTHWT >2499G, W SIGNIF OR PROC, W MULT MAJOR PROB	9.0396	27.8	18.3	1	35
623	NEONATE, BIRTHWT >2499G, W SIGNIF OR PROC, W/O MULT MAJOR PROB	1.5611	5.9	3.7	1	20
624	NEONATE, BIRTHWT >2499G, W MINOR ABDOM PROCEDURE	0.7865	3.0	2.8	1	6
625	NO LONGER VALID	-	-	-	-	-
626	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W MULT MAJOR PROB	3.4970	10.5	7.5	1	24
627	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W MAJOR PROB	1.0487	4.6	3.4	1	15
628	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W MINOR PROB	0.6300	3.7	3.0	1	10
629	NO LONGER VALID	-	-	-	-	-
630	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W OTHER PROB	0.1941	2.1	1.9	1	4
631	BPD AND OTH CHRONIC RESPIRATORY DISEASES ARISING IN PERINATAL PE	3.9579#	18.2	11.8	2	27
632	OTHER RESPIRATORY PROBLEMS AFTER BIRTH	0.4600#	2.9	2.5	1	8
633	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W CC	0.7891#	6.0	5.6	1	15
634	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W/O CC	0.5970#	2.5	2.2	2	8
635	NEONATAL AFTERCARE FOR WEIGHT GAIN	0.5987#	9.0	6.6	1	22
636	NEONATAL DIAGNOSIS, AGE > 28 DAYS	2.9494	13.1	6.0	1	22
900	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT AGE <= 21 W/O	0.8460	10.3	6.2	1	23
901	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT AGE > 21 W/O	0.5782	4.7	3.5	1	14

[FR Doc. 97-28686 Filed 10-29-97; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF EDUCATION

[CFDA No.: 84.234N]

Projects With Industry; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of program: The Projects With Industry (PWI) program creates and expands job and career opportunities in the competitive labor market for individuals with disabilities by engaging the talent and leadership of private industry as partners in the rehabilitation process. PWI projects identify competitive job and career opportunities and the skills needed to perform those jobs, create practical settings for job readiness and training programs, and provide job placement and career advancement services.

Eligible Applicants: Employers, profitmaking and nonprofit organizations, designated State units, labor unions, community rehabilitation program providers, trade associations, Indian tribes or tribal organizations, and other agencies or organizations with the capacity to create and expand job and career opportunities for individuals with disabilities.

Only eligible applicants that propose to serve a geographic area that is currently unserved or underserved by the PWI program can receive new awards under this program.

Deadline For Transmittal Of Applications: January 13, 1998.

Deadline For Intergovernmental Review: March 14, 1998.

Applications Available: October 31, 1997.

Available Funds: $731,846.

Estimated Range of Awards: $158,000–$238,000.

Estimated Average Size of Awards: $198,000.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Parts 369 and 379.

Priorities

Competitive Priority: The competitive preference priority concerning Empowerment Zones and Enterprise Communities in the notice of final priorities for this program, published in the **Federal Register** on December 9, 1994 (59 FR 63860), applies to this competition.

Background

The Empowerment Zone and Enterprise Community program is a critical element of the Administration's community revitalization strategy. The program is a first step in rebuilding communities in America's poverty-stricken inner cities and rural heartlands. It is designed to empower people and communities by inspiring Americans to work together to create jobs and opportunity.

The Federal Government has designated nine Empowerment Zones (Atlanta, Georgia; Baltimore, Maryland; Chicago, Illinois; Detroit, Michigan; New York, New York; Philadelphia, Pennsylvania/Camden, New Jersey; Kentucky Highlands, Kentucky; Mid-Delta, Mississippi; and Rio Grande Valley, Texas). Two Supplemental Empowerment Zones have been designated—Los Angeles, California and Cleveland, Ohio. Ninety-five Enterprise Communities have been designated. A full list of Enterprise Communities and additional information are available upon request from the Department of Housing and Urban Development (HUD) at 1–800–998–9999.

Under 34 CFR 75.105(c)(2)(i), the Secretary gives preference to applications that meet the following competitive priority. Ten bonus points will be assigned to applications determined to be approvable on the basis of their evaluation under the applicable program selection criteria. These bonus points are in addition to any points the application earns under the selection criteria for this program.

Competitive Preference Priority—Providing Program Services in an Empowerment Zone or Enterprise Community

Under the Projects With Industry program, competitive preference will be given to applications that—(1) Propose the provision of substantial services in Empowerment Zones or Enterprise Communities; and (2) Propose projects that contribute to the strategic plan of the Empowerment Zone or Enterprise Community and that are made an integral component of the Empowerment Zone or Enterprise Community activities.

A PWI project may provide services at one or more sites. A PWI project is considered to be providing substantial services in a zone or community if a minimum of 51 percent of the total number of persons served by the project, irrespective of the number of sites, reside in a zone or community and at least 1 of the project sites is located within the boundaries of a zone or community. If there is only one project site, it must be located within the boundaries of a zone or community.

Invitational Priority: Under 34 CFR 75.105 (c)(1), the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects that establish collaborative consortia with designated State vocational rehabilitation units, the business community, and other appropriate organizations to create and expand job and career opportunities for individuals with disabilities including career advancement services that prepare these individuals for leadership and professional job positions in a variety of industries.

For Further Information Contact: Martha Muskie, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3320 Switzer Building, Washington, D.C. 20202. Telephone (202) 205–3293.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

For Applications Contact: The Grants and Contracts Service Team (GCST), U.S. Department of Education, 600 Independence Avenue, S.W., Room 3317, Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–8351. The preferred method for requesting applications is to FAX your request to (202) 205–8717. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
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To use the pdf you must have the Adobe Acrobat Reader Program with

Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 795g.

Dated: October 27, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–28827 Filed 10–29–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket Nos. EA–159 and EA–161]

Applications to Export Electric Energy; Cincinnati Gas & Electric Company and PSI Energy, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Applications.

SUMMARY: Cincinnati Gas & Electric Company and PSI Energy Inc., both FERC regulated public utility companies, have submitted applications to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before December 1, 1997.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–5883 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On October 9, 1997, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received a joint application for authorization to export electric energy to Canada, pursuant to section 202(e) of the FPA, from Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI). A single application for these two entities was submitted because the two companies collectively are the "Cinergy Operating Companies." However, each company will require a separate export authorization. By letter, on October 14, 1997, the applicants clarified their request and ask that each be issued an export authorization.

Each company is a regulated public utility. CG&E, an Ohio corporation, and PSI, an Indiana corporation, each propose to sell electric energy to Canada that is either excess to its system or purchased from electric utilities or other suppliers within the U.S.

The applicants would arrange for the exported energy to be transmitted to Canada over the international facilities owned by Basin Electric, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Company, Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. Each of the transmission facilities, as more fully described in the joint application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any persons desiring to become a party to these proceedings or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Comments on Cincinnati Gas & Electric Company's request to export to Canada should be clearly marked with Docket EA–159. Comments of PSI's request to export to Canada should be clearly marked with Docket EA–161. Additional copies are to be filed directly with Michael E. Martin, VP, Power Marketing & Trading, Cinergy Services, Inc., 139 East Fourth Street, Cincinnati, OH 45202; Stephen G. Kozey, Senior Counsel, Cinergy Services, Inc., 1000 East Main Street, Plainfield, IN 46168; AND John S. Moot, Nancy D. Baird, Skadden, Arps, Slate, Meagher & Flom, 1440 New York Avenue, NW, Washington, DC 20005.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed actions will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on October 24, 1997.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal and Power Im/Ex, Office of Coal and Power Systems, Office of Fossil Energy.

[FR Doc. 97–28790 Filed 10–29–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP96–213–000, et al.]

Columbia Gas Transmission Corporation; Notice of Site Visits

October 24, 1997.

The Office of Pipeline Regulation (OPR) will conduct site visits, with representatives of Columbia Gas Transmission Corporation, of the following portions of the Market Expansion Project on the dates indicated:

November 3–4, 1997—Glady Storage Field facilities in Randolph and Pocahontas Counties, West Virginia and the Terra Alta and Terra Alta South Storage Field facilities in Preston County, West Virginia.

November 4–5, 1997—Line V–50 Replacement in Mahoning County, Ohio and the Crawford and Laurel Storage Field facilities in Hocking County, Ohio.

All interested parties may attend. Those planning to attend must provide their own transportation.

For further information, please contact Paul McKee at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–28694 Filed 10–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3914–000]

Commonwealth Electric Company; Notice of Filing

October 24, 1997.

Take notice that on September 30, 1997, Commonwealth Electric Company tendered for filing a Notice of Withdrawal of in the above-referenced docket.

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 November 6, 1997. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–28703 Filed 10–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–35–000]

El Paso Natural Gas Company; Notice of Application

October 24, 1997.

Take notice that on October 17, 1997, El Paso Natural Gas Company (El Paso) P.O. Box 1492, El Paso, Texas, 79978, filed in Docket No. CP98–35–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval to abandon from interstate service two compressor with appurtenances, 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 has converted the twenty-inch O. D. Schafer Plant Line, on which the Panoma No. 1, from an east-west directional flow line to one with bi-directional flow capability. El Paso further states that it is seeking abandonment authorization for Units No. 6 and 7 at the Panoma Plant No. 1 because these compressors are not configured to handle bi-directional flow. El Paso indicates that it proposes to abandon these facilities by removal. El Paso asserts that the abandonment will have no impact on El Paso's rates.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–28695 Filed 10–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–2372–006]

Enova Energy, Inc.; Notice of Filing

October 24, 1997.

Take notice that on August 26, 1997, Enova Energy Inc. (Enova Energy), tendered for filing a revised code of conduct and notification of the change in status in the above-referenced docket.

Any person desiring to be heard or to protest this 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 should be filed on or before November 3, 1997. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–28702 Filed 10–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–373–000]

Koch Gateway Pipeline Company; Notice of Informal Settlement Conference

October 24, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on November 4, 1997, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Edith A. Gilmore at (202) 208–2158 or Sandra J. Delude at (202) 208–0583.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–28699 Filed 10–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–37–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

October 24, 1997.

Take notice that on October 20, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a request with the Commission in Docket No. CP98–37–000, pursuant to Sections 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install and operate a new delivery point, to be located in Stevens County, Kansas authorized in blanket certificate issued in Docket No. CP82–401–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to install and operate a new delivery point to accommodate natural gas deliveries to UtiliCorp United Inc. (UCU). UCU has requested the proposed delivery point to serve a local residential customer. The proposed volumes to be delivered for UCU would be 4 MMBtu on a peak day and 529 MMBtu on an annual basis. Northern estimates a cost of constructing the proposed delivery point of $6,500.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, 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 NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–28696 Filed 10–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4251–000]

Orange and Rockland Utilities, Inc.; Notice of Filing

October 24, 1997.

Take notice that on September 11, 1997, Orange and Rockland Utilities, Inc., tendered for filing a Notice of Withdrawal of in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 6, 1997. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–28700 Filed 10–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–71–000; and RP97–312–000]

Transcontinental Gas Pipe Line Corporation; Notice of Informal Settlement Conference

October 24, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, October 30, 1997, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets. If necessary, the conference will continue to Friday, October 31, 1997.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact David R. Cain at (202) 208–0917, Donald A. Heydt at (202) 208–0740 or Paul B. Mohler at (202) 208–1240.

Linwood A. Watson, Jr.,

Acting Secretary,

[FR Doc. 97–28698 Filed 10–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–1685–008]

Vastar Power Marketing, Inc., Notice of Filing

October 24, 1997.

Take notice that on September 23, 1997, Vastar Power Marketing, Inc., Tendered for filing an amendment to its Notification of Change in Status filed August 27, 1997.

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 November 6, 1997. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–28701 Filed 10–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–44–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

October 24, 1997.

Take notice that on October 22, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota, filed in Docket No. CP98–44–000, a request pursuant to Section 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate new metering and associated appurtenant facilities to provide delivery of natural gas to Interenergy Corporation, under Williston Basin's blanket certificate issued in Docket No. CP82–487–000, pursuant to 18 CFR Part 157, Subpart F of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston Basin proposes to construct and operate metering and associated facilities within an existing meter station located in Big Horn County, Wyoming. Williston Basin further states that the proposed facility would consist of a meter, regulator and miscellaneous piping, gauges and valves, all of which would be enclosed within an existing steel link fence. Williston Basin also states that the proposed metering facility would be constructed on existing pipeline right-of-way at the Manderson meter station in Big Horn County, Wyoming. It is further stated that Interenergy would reimburse Williston Basin for the cost of this project which is approximately $6,200.

Williston Basin states that Interenergy requested the installation of these metering facilities to allow Williston Basin to deliver up to 200 Mcf of natural gas per day Interenergy to use as fuel for compression and processing equipment in the area. Williston states that it would provide natural gas transportation deliveries to Interenergy under Rate Schedules FT–1 and/or IT–1. Williston further states that (i) the volumes delivered to Interenergy are within the contractual entitlements to; (ii) that establishing the addition of the proposed new delivery point is not prohibited by Williston Basin's existing tariff; and, (iii) that the addition of the proposed facilities would have no significant effect on Williston Basin's peak day or annual requirements and capacity has been determined to exist on the Williston Basin system to serve this natural gas market.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–28697 Filed 10–29–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30442; FRL–5751–4]

Engelhard Corp.; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by December 1, 1997.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30442] and the file symbols to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Driss Benmhend, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–9525; e-mail: benmhend.driss@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing New Active Ingredients Not Previously Registered

1. File Symbol: 70060–E. Applicant: Engelhard Corporation, 101 Wood Avenue, Iselin, NJ 08830. Product Name: M-97-002. Active ingredient: Koalin at 99.4 percent. Proposed classification/Use: None. Controls damage to plants from insects, mites, fungi, and bacteria.

2. File Symbol: 70060–R. Applicant: Engelhard Corporation. Product Name: M-97-009. Active ingredient: Kaolin at 100 percent. Proposed classification/Use: None. Aids in control of damage to plants from insects and mites.

3. File Symbol: 70060–G. Applicant: Engelhard Corporation. Product Name: M-96-018. Active ingredient: Kaolin at 98.8 percent. Proposed classification/Use: None. Aids in control of damage to plants from insects, mites, fungi, and bacteria.

Notice of approval or denial of an application to register a pesticide

product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30442] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–30442]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Written comments filed pursuant to this notice, will be available in the Public Information and Records Integrity Branch, Information Resources and Services Division at the address provided, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805) to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: October 15, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–28818 Filed 10–29–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5915–9]

Proposed Administrative Order on Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as Amended by the Superfund Amendments and Reauthorization Act—Butterfield Canyon Site, Salt Lake County, UT

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for public comment.

SUMMARY: Notice is hereby given of a proposed settlement under Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (CERCLA) concerning the Butterfield Canyon Site, Salt Lake County, Utah. The Administrative Order on Consent (Order) requires Kennecott Utah Copper Corporation to perform a removal action at the site.

DATES: Comments must be submitted on or before December 1, 1997.

ADDRESSES: The Order is available for public inspection at the EPA Superfund Records Center, 999 18th Street, 5th Floor, North Tower, Denver, Colorado. Comments should be addressed to Paul J. Rogers, Enforcement Specialist, (8ENF–T), U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405, and should reference the Butterfield Canyon Site Order, EPA Docket No. CERCLA–VIII–97–09.

FOR FURTHER INFORMATION CONTACT: Paul J. Rogers, Enforcement Specialist, at 303/312–6356.

SUPPLEMENTARY INFORMATION: Pursuant to section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (CERCLA), EPA and Kennecott Utah Copper Corporation (Kennecott) have entered into an Administrative Order on Consent (Order) concerning a removal action at the Butterfield Canyon Site in Salt Lake County. Under the Order, Kennecott will conduct response actions to address lead contaminated soils in Butterfield Canyon to minimize potential human and ecological exposure and prevent mine waste from being transported down Butterfield Creek. Upon completion of the action, EPA will covenant not to sue Kennecott for any failure to perform the work agreed to in the Order. EPA also proposes to provide Kennecott will contribution protection for matters addressed in this Order to the extent provided by section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2). Matters addressed are defined in the Order as the work as defined in the Order and all response costs incurred and to be incurred by the EPA in connection with the work to be performed under the Order.

For a period of thirty (30) days from the date of this publication, the public may submit comments to EPA relating to the contribution protection proposed to be conferred in the Order. Copies of the Order may be obtained from Paul J. Rogers, Enforcement Specialist, (8ENF–T), U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405. Additional background information relating to the Order and the Site is available for review at the Superfund Records Center at the address listed above.

Dated: October 2, 1997.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region VIII.

[FR Doc. 97–28816 Filed 10–29–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5915–8]

Proposed Administrative Order on Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as Amended by the Superfund Amendments and Reauthorization Act—Herriman, UT

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for public comment.

SUMMARY: Notice is hereby given of a proposed settlement under sections 104(a) and 122(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (CERCLA) concerning the Herriman Residential Soils Removal Action Site in Herriman, Utah (Site). The Administrative Order on Consent (Order) requires Kennecott Utah Copper Corporation to perform certain response actions related to a removal action to be performed at the Site.

DATES: Comments must be submitted on or before December 1, 1997.

ADDRESSES: The Order is available for public inspection at the EPA Superfund Records Center, 999 18th Street, 5th Floor, North Tower, Denver, Colorado.

Comments should be addressed to Paul J. Rogers, Enforcement Specialist, (8ENF–T), U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405, and should reference the Herriman Residential Soils Removal Action Order, EPA Docket No. CERCLA–VIII–97–08.

FOR FURTHER INFORMATION CONTACT: Paul J. Rogers, Enforcement Specialist, at 303/312–6356.

SUPPLEMENTARY INFORMATION: Pursuant to sections 104(a) and 122(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (CERCLA), EPA and Kennecott Utah Copper Corporation (Kennecott) have entered into an Administrative Order on Consent (Order) concerning the Herriman Residential Soils Removal Action Site in Herriman, Utah (Site). Under Phase I of the Removal Action at the Site, EPA will remove lead and arsenic contaminated soils from approximately 30 residences in Herriman, Utah. The Order requires Kennecott Utah Copper Corporation to provide transportation and disposal of no more than 60,000 cubic yards of lead and arsenic contaminated soils removed by EPA and for Kennecott to provide no more than 60,000 cubic yards of clean backfill as part of the Phase I response action. Upon completion of the action, EPA will covenant not to sue Kennecott for any failure to perform the work agreed to in the Order. EPA also proposes to provide Kennecott with contribution protection for matters addressed in this Order to the extent provided by section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2). Matters addressed are defined in the Order as response actions taken or to be taken by the EPA or any other person (as that term is defined by section 101(21) of CERCLA, 42 U.S.C. 9601(21)) and all response costs incurred and to be incurred by the EPA or any other person (as that term is defined by section 101(21) of CERCLA, 42 U.S.C. 9601(21)) at or in connection with Phase I Herriman Residential Soils Removal. For a period of thirty (30) days from the date of this publication, the public may submit comments to EPA relating to the contribution protection proposed to be conferred in this Order. A copy of the Order may be obtained from Paul J. Rogers, Enforcement Specialist, (8ENF–T), U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405. Additional background information relating to the Order and the Site is available for review at the Superfund Records Center at the address listed above.

Dated: October 2, 1997.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region VIII.

[FR Doc. 97–28815 Filed 10–29–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5915–7]

Notice of Tentative Decision To Deny Fundamentally Different Factors Variance Requests

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative decision to deny Fundamentally Different Factors Variance requests.

SUMMARY: EPA Region 6 intends to deny the Fundamentally Different Factors Variance requests submitted by a group of Oil and Gas Industry companies that own and operate oil production platforms and developed and undeveloped lease blocks in the Gulf of Mexico. These facilities are subject to limitations for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category. The requests seek alternate best available technology economically achievable (BAT) oil and grease limits for produced water discharges.

DATES: Comments on this tentative decision to deny these Fundamentally Different Variance requests must be submitted by December 29, 1997.

ADDRESSES: Comments on this tentative decision should be sent to the Regional Administrator, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ms. Wilma Turner, Customer Service Branch (6WQ–CA), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone: (214) 665–7516, Fax: 214–665–6490, E-mail: TURNER.WILMA@EPAMAIL.EPA.GOV

Copies of the tentative decision may be obtained from Ms. Turner.

The administrative record for this tentative decision will be available for viewing at the EPA Headquarters Water Docket, room M2616, 401 M Street, SW, Washington, D.C. 20460, Monday through Friday from 9 a.m. until 4 p.m. The phone number is 202–260–3027. Please ask for the public record for the Offshore Oil and Gas FDF Tentative Denial.

SUPPLEMENTARY INFORMATION: Sixteen Oil and Gas Industry companies that own and operate oil production platforms and developed and undeveloped lease blocks in the Gulf of Mexico have submitted Clean Water Act section 301(b)(1)(A), 301(b)(2)(A) and 301(b)(2)(E) fundamentally Different Factors (FDF) variance requests. These requests seek alternate best available technology economically achievable (BAT) oil and grease limits for produced water discharges. These facilities are subject to limitations for the Oil and Gas Extraction Point Source Category, Subpart A—Offshore Subcategory specified in 40 CFR 435. The companies seeking variances are: Anadarko Petroleum Corporation, ARCO Oil and Gas Company, Chevron USA Production Company, Conoco, Inc., CanadianOxy Offshore Production Company, Freeport-McMoRan, Kerr-McGee Corporation, Marathon Oil Company, Pennzoil Petroleum Company, Pennzoil Exploration and Production Company, Shell Offshore, Inc., Shell Western Exploration and Production, Inc., Texaco Exploration and Production, Inc., Texaco, Inc., Four Star Oil and Gas Company and Union Oil Company of California.

This is to give notice that the Regional Administrator intents to deny the FDF Variance requests because they do not satisfy the criteria specified in section 301(n) of the Clean Water Act or 40 CFR 125.31. This decision is tentative and open to comment from the public.

EPA's comments and public hearing procedures may be found at 40 CFR 124.10 and 124.12 (48 FR 14264, April 1, 1983, as amended at 49 FR 38051, September 26, 1984). During the comment period, any interested person may request a Public Hearing by filing a written request which must state the issues to be raised. A public hearing will be held when EPA finds a significant degree of public interest. EPA will notify each person who has submitted written comments or requested notice of the final decision. A final decision means a final decision to grant or deny the Fundamentally Different Factors Variance request.

Dated: October 7, 1997.

Jerry Clifford,

Acting Regional Administrator, EPA Region 6.

[FR Doc. 97–28814 Filed 10–29–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficiency of Assets To Satisfy All Claims of Certain Financial Institution In Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC), as receiver for the financial institution specified in **SUPPLEMENTARY INFORMATION,** has determined that the proceeds which can be realized from the liquidation of the assets of the below listed receivership estate are insufficient to wholly satisfy the priority claims of depositors against the receivership estate. Therefore, upon satisfaction of secured claims, depositor claims and claims which have priority over depositors under applicable law, no amount will remain or will be recovered sufficient to allow a dividend, distribution or payment to any creditor of lessor priority, including but not limited to, claims of general creditors. Any such claims are hereby determined to be worthless.

FOR FURTHER INFORMATION CONTACT: Thomas Bolt, Counsel, Legal Division, FDIC, 550 17th Street, N.W., Room H–11048, Washington, D.C. 20429. Telephone: (202) 736–0168.

SUPPLEMENTARY INFORMATION:

Financial Institution in Receivership Determined to Have Insufficient Assets to Satisfy All Claims

Eastland Savings Bank, #4558, Woonsocket, Rhode Island.

Dated: October 23, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–28706 Filed 10–29–97; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER NUMBER: .97–28299.

PREVIOUSLY ANNOUNCED DATE & TIME: Tuesday, October 28, 1997, 10:00 a.m. Meeting closed to the public.

This meeting was cancelled.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, October 30, 1997, 10:00 a.m. Meeting open to the public.

This meeting was cancelled.

DATE & TIME: Tuesday, November 4, 1997 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: Wednesday, November 5, 1997 at 10:00 a.m.

The Public Hearing on Recordkeeping and Reporting Notice of Proposed Rulemaking has been cancelled.

DATE & TIME: Thursday, November 6, 1997 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.

Create the Position of Legal Information System Manager, GS–14.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie E. Emmons,

Secretary of the Commission.

[FR Doc. 97–28967 Filed 10–28–97; 3:31 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Interagency Committee on Dam Safety (ICODS); Charter and Operating Rules

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of the revised Charter and Operating Rules of the Interagency Committee on Dam Safety.

SUMMARY: The Federal Emergency Management Agency (FEMA) gives notice of the revised Charter and Operating Rules of the Interagency Committee on Dam Safety (ICODS). The purpose of ICODS is to coordinate policies for and provide guidance to all participants of the National Dam Safety Program.

DATES: This notice is effective as of October 30, 1997.

FOR FURTHER INFORMATION CONTACT: Harold W. Andress Jr., National Dam Safety Program, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2801, (facsimile) (202) 646–4596 (not toll free calls).

SUPPLEMENTARY INFORMATION: FEMA's National Dam Safety Program was established October 4, 1979, when President Carter instructed the heads of each Federal agency responsible for any aspect of dam safety to adopt the Federal Guidelines for Dam Safety. This coincided with the formation of FEMA under Reorganization Plan No. 3 of 1978 and the subsequent assignment of responsibility for the coordination of efforts to promote dam safety to the Director of FEMA under § 2–103 of Executive Order 12148. Federal departments and agencies were directed to report their progress in implementing the dam safety guidelines to the Director of FEMA. Subsequently, the national dam safety program was codified when the President signed into law the Water Resources Development Act of 1996 (Public Law 104–303) on October 12, 1996. Section 215 of the Public Law 104–303, which amended Public Law 92–367, named the latter Act the *National Dam Safety Program Act* (the Act), and formally established ICODS. Public Law 104–303 directs the Director of FEMA to lead a coordinated national dam safety program. Under section 7 of the Act ICODS comprises representatives of 10 Federal departments and agencies: the Department of Agriculture, the Department of Defense, the Department of Energy, the Department of the Interior, the Department of Labor, FEMA, the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, the Tennessee Valley Authority, and the United States Section of the International Boundary and Water Commission. The Director of FEMA chairs ICODS.

ICODS provides a permanent forum for member agencies to coordinate interagency activities and to identify, discuss, and recommend solutions to institutional, managerial, technical, legislative, and policy issues that affect national dam safety. ICODS has been active on several fronts since its formation, April 24, 1980. It is now appropriate to announce formally its revised Charter and Operating Rules, and its objectives, mission, duties and oversight role for the National Dam Safety Program, originally published in the **Federal Register**, August 28, 1985, 50 FR 34912.

Interagency Committee on Dam Safety (ICODS) Charter and Operating Rules

I. Preamble

The need for positive action and leadership to assure safe dams has long been established by the President, Acts of Congress, actions of Federal agencies, State Governments, professional societies, engineers, public concerns, and now statutorily by the Congress through passage of Public Law 104–303. A dam is as defined in section 2 of that Act.

It is necessary that Federal agencies having an involvement with dams coordinate their activities to assure optimum use of agency resources in establishment of principles and guidance that will lead to safer dams. These agencies also have the responsibility to provide leadership so others may benefit from the skills, experience, and programs of the Federal establishment. ICODS provides the framework for meeting these objectives. ICODS members will individually carry decisions and recommendations that impact on policy and legislative matters to their respective agencies for appropriate actions.

II. Mission

The mission of ICODS is to encourage the establishment and maintenance of effective Federal and State programs, policies, and guidelines to enhance dam safety for the protection of human life and property. This is achieved through coordination and information exchange among Federal agencies and State dam safety agencies sharing common problems and having responsibilities for any aspect of dam safety (e.g., planning, design, construction, operation, emergency actions, inspections, maintenance, regulation or licensing, technical or financial assistance, research, data collection and ultimate disposition). Such coordination is not limited to Federal dam safety matters as State and local issues and may provide a need for technology exchange.

ICODS will provide a permanent forum for these organizations to advise FEMA in its role of establishing and maintaining a coordinated national dam safety program by making recommendations on institutional, managerial, technical, legislative, and policy issues that affect national dam safety.

III. Objectives

ICODS objectives are aligned with the objectives of the National Dam Safety Program. These objectives are to:

(1) ensure that new and existing dams are safe through the development of technologically economically feasible programs and procedures for national dam safety hazards reduction;

(2) encourage acceptable engineering policies and procedures to be used for dam site investigation, design, construction, operations, maintenance, inspections and modifications, and emergency preparedness;

(3) encourage the establishment and implementation of effective dam safety programs in each State based on State standards;

(4) develop and encourage public awareness projects to increase public acceptance and support of State dam safety programs;

(5) develop technical assistance materials for Federal and non-Federal dam safety programs; and

(6) develop mechanisms with which to provide Federal technical assistance for dam safety to the non-Federal sector.

IV. Duties

ICODS shall encourage the establishment and maintenance of effective Federal and State programs, policies, and guidelines intended to enhance dam safety for the protection of human life and property through:

(1) coordination and information exchange among Federal agencies and State dam safety agencies;

(2) coordination and information exchange among Federal agencies concerning implementation of the Federal Guidelines for Dam Safety;

(3) federal activities that foster State efforts to develop and implement effective programs for the safety of dams;

(4) improved techniques, historical experience, and equipment for rapid and effective dam construction, rehabilitation, and inspection; and

(5) devices for the continued monitoring of the safety of dams.

V. Oversight

The ICODS oversight role includes providing consultation to the FEMA Director in the establishment and maintenance of a coordinated national dam safety program. Also included is the preparation of a biennial report, not later than 90 days after the end of each odd-numbered fiscal year, that describes the status of the Program and describes the progress achieved by Federal agencies in implementing the Federal Guidelines for Dam Safety during the two preceding fiscal years.

VI. Organization

A. Membership

The members are one representative designated from each of the following Federal Departments/Agencies: Agriculture, Defense, Energy, Interior, Labor, FEMA, Federal Energy Regulatory Commission, Nuclear Regulatory Commission, Tennessee Valley Authority, and the United States Section of the International Boundary and Water Commission.

B. Chair

The Director of FEMA is the Chair of ICODS. In the absence of the Director, the FEMA member will serve as designated Chair. In the absence of the FEMA member a representative of a member Federal Department will be named by the Director to act as Chair. At the discretion of the Chair, others may participate in ICODS meetings and subcommittees activities.

C. Subcommittees

ICODS will establish necessary subcommittees to fulfill its purpose. A member of ICODS will be named by the Chair as contact person for each subcommittee. Subcommittees, their membership, chairs, and assignments will be approved by ICODS. It shall be the responsibility of the subcommittee chair to report to ICODS. Standing subcommittees of ICODS shall include, but are not limited to, *Operations, Research, Training, Guidelines Development, National Dam Safety Coordinations, and National Inventory of Dams.*

D. Meetings

The Chair will call meetings as needed. A minimum of one meeting per calendar quarter will be scheduled.

E. Voting and Rules

Each member of ICODS will have one vote. Each subcommittee member shall have one vote on their subcommittee. A member may designate an alternate to vote in his or her absence. Every effort will be made to arrive at a consensus. Robert's Rules of Order will be followed.

F. Funding

Each agency will be responsible for supporting its representatives. Any cost for consultants, printing, etc., will be funded through the National Dam Safety Program.

G. Reporting

Each member of ICODS will be responsible for reporting biennially to the Congress on their activities as set forth in Section 10 of the National Dam Safety Program Act.

VII. Amending Charter and Operating Rules

Amendments may be made to the Charter and Operating Rules, the members desiring, by a two-thirds majority vote of the membership.

Dated: October 23, 1997.

Michael J. Armstrong,

Associate Director, Mitigation Directorate.

[FR Doc. 97–28795 Filed 10–29–97; 8:45 am]

BILLING CODE 6718–04–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 62 FR 55644, October 27, 1997.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 A.M. Wednesday, October 29, 1997.

CANCELLATION OF THE MEETING: Notice is hereby given of the cancellation of the Board of Directors meeting scheduled for October 29, 1997.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 97–28934 Filed 10–28–97; 1:00 pm]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, on or before November 10, 1997.

Agreement No.: 203–011075–041.

Title: Central America Discussion Agreement.

Parties:

Concorde Shipping, Inc.
Global Reefer Carriers Ltd.
Dole Fresh Fruit
King Ocean Central America, S.A.
Crowley American Transport, Inc.
Seaboard Marine, Ltd.
A.P. Moller-Maersk Line
Sea-Land Service, Inc.
NPR, Inc.

Synopsis: The proposed modification renames the existing geographic scope as the Central American Section, adds a Panama Section (between the United States and Panama) and a Puerto Rico Section (between Puerto Rico and both Central America and the Caribbean). The modification also adds NPR, Inc. as a party to the Puerto Rico Section, makes administrative changes, and restates the Agreement.

Agreement No.: 203–011367–013.

Title: Colombia Discussion Agreement.

Parties:

Frontier Liner Service
Crowley American Transport, Inc.
A.P. Moller-Maersk Line
Seaboard Marine Ltd.
Sea-Land Service Inc.

Synopsis: The proposed modification revises Article 5.2 of the Agreement to provide authority for the parties to discuss the terms and conditions of service contracts with the members of the Colombia Independent Carrier Agreement (FMC No. 202–011572) ("the Conference") and to agree with the members of the Conference to aggregate the volume of cargo for purposes of service contracts separately published in the independent line parties of the Discussion Agreement essential terms publications and the essential terms publication of the Conference. The modification also deletes several parties from the Agreement, including the West Coast of South America Agreement; adds A.P. Moller-Maersk Line as a party to the Agreement; revises Article 7—Membership—in its entirety; deletes former Article 10; and restates the Agreement.

Agreement No.: 202–011572–001.

Title: Colombia Independent Carrier Agreement.

Parties:

Frontier Liner Service
Seaboard Marine Ltd.

Synopsis: The proposed modification adds a new Article 14(c) to the Conference Agreement that authorizes the parties to discuss the terms and conditions of service contracts with the members of the Colombia Discussion Agreement (FMC No. 203–011367) and to agree with the members of the Discussion Agreement to aggregate the volume of cargo for purposes of service contracts separately published in the Conference's essential terms publication and the essential terms publications of the independent line parties to the Discussion Agreement.

Agreement No.: 271–011591.

Title: HMM/Wilhelmsen Space Charter Agreement.

Parties:

Hyundai Merchant Marine Co., Ltd.
Wilhelmsen Lines A/S

Synopsis: The proposed Agreement would permit the parties to charter space aboard one another's ro-ro vessels in the trade between United States Atlantic, Gulf, and Pacific ports, and inland U.S. points via such ports, and ports and points in Japan and Korea. It would also permit the parties to engage in related cooperative activity with respect to terminals and equipment.

Agreement No.: 217–011592.

Title: Slot Charter Agreement Between P&O Nedlloyd B.V. and Columbus Line.

Parties:

P&O Nedlloyd B.V. ("Nedlloyd")
Columbus Line ("Columbus")

Synopsis: The proposed Agreement authorizes Columbus to charter, on an as-needed/space-available basis, container slots from Nedlloyd on vessels on which Nedlloyd has chartered space in the trade between United States ports and ports in Australia and New Zealand.

By Order of the Federal Maritime Commission.

Dated: October 24, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–28738 Filed 10–29–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Strong Forwarding, 8311 Pat Boulevard, Tampa, FL 33615, Cindy Ellen Strong, Sole Proprietor

Quick Help Services, Inc., 7455 N.E. 2nd Avenue, Miami, FL 33138–5311, Officers: Antonio Teijeiro, President; Jose A. Teijeiro, Vice President;

Wells International Corp., 180 15th Street, Jersey City, NJ 07310, Officers: Chun-Chien Lin, President; Chang Lin-Ju Lin, Vice President.

Dated: October 24, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–28705 Filed 10–29–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 9:00 a.m.—October 27, 1997.

PLACE: 800 North Capitol Street NW.—Room 1000, Washington, DC.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED: 1. Docket No. 96–20—Port Restrictions and Requirements in the United States/Japan Trade.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 97–28883 Filed 10–28–97; 10:47 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 3:30 p.m.–October 24, 1997.

PLACE: 800 North Capitol Street, N.W.—Room 1000, Washington, D.C.

STATUS: Closed.

MATTERS(S) TO BE CONSIDERED: 1. Docket No. 96–20—Port Restrictions and Requirements in the United States/Japan Trade.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 97–28884 Filed 10–28–97; 10:58 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 13, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Billy Maithews, Abbeville, Louisiana; to retain voting shares of Vermilion Bancshares Corporation, Kaplan, Louisiana, and thereby indirectly acquire Vermillion Bank & Trust Company, Kaplan, Louisiana.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Margaret Mary Kerndt, Fair Oakes, California; to acquire voting shares of Kerndt Bank Services, Inc., Lansing, Iowa, and thereby indirectly acquire Kerndt Brothers Savings Bank, Lansing, Iowa.

Board of Governors of the Federal Reserve System, October 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28684 Filed 10–29–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 24, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Community National Bank Corporation, ESOP, Venice, Florida; to become a bank holding company by acquiring 30 percent of the voting shares of Community National Bank Corporation, Venice, Florida, and thereby indirectly acquire Community National Bank of Sarasota County, Venice, Florida.

2. State of Franklin Bancshares, Inc., Johnson City, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of State of Franklin Savings Bank, Johnson City, Tennessee.

Board of Governors of the Federal Reserve System, October 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28683 Filed 10–29–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 97-27898) published on pages 54850 and 54851 of the issue for Wednesday, October 22, 1997.

Under the Federal Reserve Bank of St. Louis heading, the entry for Area Bancshares Corporation, Ownesboro, Kentucky, is revised to read as follows:

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Area Bancshares Corporation, Owensboro, Kentucky; to acquire a company and thereby engage in developing and providing data processing and data transmission services to financial institutions for use in providing products and services over the Internet, pursuant to § 225.28(b)(14) of the Board's Regulation Y.

Comments on this application must be received by November 5, 1997.

Board of Governors of the Federal Reserve System, October 27, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28829 Filed 10–29–97; 8:45 am]

BILLING CODE 6210–01–F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of November meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will meet on Friday, November 7, 1997, from 9:00 a.m. to 4:00 p.m. in Room 7C13 of the General Accounting Office building, 441 G St., N.W., Washington, D.C.

The purpose of the meeting is to discuss the following issues: (1) Property, Plant, and Equipment (PP&E); (2) Software; and (3) Social Insurance.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., N.W., Room 3B18, Washington D.C. 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: October 24, 1997.

Wendy M. Comes,

Executive Director.

[FR Doc. 97–28722 Filed 10–29–97; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Workshop on "Autism: Emerging Issues in Prevalence and Etiology"

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: A workshop entitled "Autism: Emerging Issues in Prevalence and Etiology," jointly sponsored by the Developmental Disabilities Branch, BDDD, NCEH, CDC and the National Alliance for Autism Research (NAAR).

Times and Dates: 8:30 a.m.–6 p.m., November 6, 1997; 8:30 a.m.–12:30 p.m., November 7, 1997.

Place: Centers for Disease Control and Prevention, Auditorium A, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open for participation by anyone with an interest in the epidemiology of Autism and performing epidemiologic research in Autism. Invitees include scientific researchers working with NAAR, CDC scientists, and independent researchers with expertise in the epidemiology of Autism. Attendance is limited by the space available.

Matters To Be Discussed: Topics to be discussed include the Operational Definition of Autism for Epidemiologic Surveillance Purposes; Prevalence and Epidemiology: Trends and Risk Factors; and Etiology: Emerging Issues.

Contact Persons for More Information: Media inquiries should be directed to Gail Hayes at 404/639–3286. Persons wishing to participate should e-mail or fax their request to Kimberly Caldwell, M.D., Division of Birth Defects and Developmental Disabilities, Developmental Disabilities Branch, NCEH, CDC, 4770 Buford Highway, NE, M/S F–15, Atlanta, Georgia 30341–3724. The e-mail address is kaho@cdc.gov; the fax number is 770/488–7361. Telephone 770/488–7400.

Dated: October 8, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–27570 Filed 10–29–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–37]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Medicaid Program Budget Report and Supporting Regulations 42 CFR 400.00–430.00; *Form No.:* HCFA–37 OMB # 0938–0101; *Use:* The Medicaid Program Budget report is prepared by the State Medicaid Agencies and is used by HCFA for; (1) developing National Medicaid Budget estimates, (2) quantification of Budget Assumptions, (3) the issuance of quarterly Medicaid Grant Awards, and (4) collection of projected State receipts of donations and taxes. *Frequency:* Quarterly; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 56; *Total Annual Responses:* 224; *Total Annual Hours:* 7,840.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 22, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 97–28708 Filed 10–29–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2540S]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care

Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection: Title of Information Collection:* Skilled Nursing Facility (SNF) Prospective Payment System Cost Report and Supporting Regulations in 42 CFR 413.20 and 413.24; *Form No.:* HCFA–2540S (OMB 0938–0511); *Use:* This cost report is used by free standing SNFs to achieve a final accounting adjustment of costs for health care services rendered to Medicare beneficiaries. *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions and State, Local or Tribal Government; *Number of Respondents:* 1,441; *Total Annual Responses:* 1,441; *Total Annual Hours:* 139,410.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 22, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–28781 Filed 10–29–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meetings:

Name of SEP: SBIR Phase II Topic 48—Automated System for Aneuploidy Detection in Sperm (Telephone Conference Call).

Date: November 17, 1997.

Time: 1:30 p.m.

Place: National Institute of Environmental Health Sciences, East Campus, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709.

Contact Person: Dr. Carol Shreffler, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1445.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Risk Factors for Uterine Fibroids: A Case Control Study (Telephone Conference Call).

Date: November 25, 1997.

Time: 2:30 p.m.

Place: National Institute of Environmental Health Sciences, East Campus, Building 4401, Conference Room 3446, Research Triangle, NC 27709.

Contact Person: Dr. Carol Shreffler, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle, NC 27709, (919) 541–1445.

Purpose/Agenda: To review and evaluate contract proposals.

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. Grant 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 Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: October 23, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–28690 Filed 10–29–97; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Integrated Preclinical/Clinical AIDS Vaccine Development.

Date: November 19–21, 1997.

Time: 8:30 a.m. to Adjournment.

Place: Holiday Inn Chevy Chase, Chase Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815, (301) 656–1500

Contact Person: Dr. Vassil Georgiev, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C04, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate grant applications.

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.

(Catalog of Federal Domestic Assistance Programs No. 93.855, Immunology, Allergic and Immunologic Disease Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: October 23, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–28691 Filed 10–29–97; 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 Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings 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: November 21, 1997.

Time: 1:30 p.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Richard Johnson, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 24, 1997.

Time: 2:30 p.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Richard Johnson, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

The 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 Numbers 93.242, 92.281, 93.282)

Dated: October 23, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–28692 Filed 10–29–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–48]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: December 29, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Single Family Home Mortgage Insurance Division, telephone number (202) 708–2700 (this is not a toll free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: 203(k) Rehabilitation Mortgage Insurance

OMB Control Number: 2502–

Descripton of the need for the information and proposed use: The request for OMB review involves an expanded information collection requirement for lenders that originate and service Section 203(k) mortgages. The purpose of the collection requirement is to help mitigate program abuses cited in a recent Audit Report of HUD's Office of Inspector General. The expanded information collection focuses on the loan origination process and requires increased documentation and strengthened internal control procedures.

Agency forms, if applicable: HUD–92700.

Members of affected public: Lending institutions with FHA approval to originate or service mortgages financed with 203(k) Rehabilitation Insurance.

Status of the proposed information collection: Not applicable.

Estimate of public burden: In aggregate the reporting burden is estimated at 161,850 hours annually which reflects historical loan volumes for the 203(k) loan portfolio.

Authority: Section 236 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 24, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 97–28740 Filed 10–29–97; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Sport Fishing and Boating Partnership Advisory Council Charter

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of renewal of the public advisory council charter—Sport Fishing and Boating Partnership Council.

SUMMARY: This notice is published in accordance with section 9a(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988). Following consultation with the General Services Administration, the Secretary of the Interior hereby renews the Sport Fishing and Boating Partnership Council charter to continue for two years.

DATES: The charter will be filed under the Act November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Doug Alcorn, Council Coordinator, U.S. Fish and Wildlife Service, (703) 836–1392.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to provide advice to the Secretary of the Interior through the Director of the Fish and Wildlife Service (Service) to help the Department of the Interior (Department) and the Service achieve their goal of increasing public awareness of the importance of aquatic resources and the social and economic benefits of recreational fishing and boating.

The Council will represent the interests of the sport fishing and boating constituencies and industries and will consist of no more than 18 voting members appointed by the Secretary to assure a balanced cross-sectional representation of public and private sector organizations. The Council will consist of two ex-officio members: Director, U.S. Fish and Wildlife Service, and the President, International Association of Fish and Wildlife Agencies (IAFWA). The 16 remaining members will be appointed at the Secretary's discretion to achieve balanced representation for recreational fishing and boating interests. The membership will be comprised of senior-level representatives for recreational fishing, boating, and aquatic resource conservation. These appointees must have demonstrated

expertise and experience in one or more of the following areas of national interest: the director of a state agency responsible for the management of recreational fish and wildlife resources, selected from a coastal state if the President of IAFWA is from an inland state, or selected from an inland state if the President of IAFWA is from a coastal state. Saltwater and freshwater recreational fishing; recreational boating; recreational fishing and boating industries; conservation of recreational fishery resources; aquatic resource outreach and education; and tourism.

The Council will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act (Act).

The Certification of renewal is published below.

Certification

I hereby certify that the renewal of the Sport Fishing and Boating Partnership Council is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by those statutory authorities as defined in Federal laws including, but not restricted to, the Federal Aid Sport Fish Restoration Act, Fish and Wildlife Coordination Act, and the Fish and Wildlife Act of 1956 in furtherance of the Secretary of the Interior's statutory responsibilities for administration of the U.S. Fish and Wildlife Service's mission to conserve, protect, and enhance fish, wildlife, and habitats for the continuing benefit of the American people. The Council will assist the Secretary and the Department of the Interior by providing advice on activities to enhance fishery and aquatic resources.

Dated: October 16, 1997.

Bruce Babbit,

Secretary of the Interior.

[FR Doc. 97–28809 Filed 10–29–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Reinstatement

ACTION: Notice.

SUMMARY: The collection of information listed below is submitted to the OMB for reinstatement under the provisions of the Paperwork Reduction Act of 1995. Copies of specific information collection requirements, related forms and explanatory material may be obtained by contacting the Service Information Collection Clearance Officer at the address and/or phone numbers listed below.

DATES: Comments must be submitted on or before December 1, 1997.

ADDRESSES: Comments and suggestions on specific requirements should be sent directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, Washington, DC 20503; and a copy of the comments should be sent to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 224–ARLSQ, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer, 703/358–1943; 703/358–2269 (fax).

SUPPLEMENTARY INFORMATION: The Service has submitted the following information collection clearance requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The information collection requirements in this submission implement the regulatory requirements of the Endangered Species Act (16 U.S.C. 1539), the Migratory Bird Treaty Act (15 U.S.C. 704), the Bald Eagle Protection Act (16 U.S.C. 668), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora, (CITES) (27 UST 108), and are contained in Service regulations in Chapter I, Subchapter B of Title 50 of the Code of Federal Regulations (CFR). Common permit application and record keeping requirements have been consolidated in 50 CFR 13, and unique requirements of various statutes as identified below.

The Service has redesigned the standard license/permit application form 3–200 to assist persons in applying for Service permits issued under Subchapter B. Previously, the Service consolidated all requirements in one submission, and they were assigned OMB Approval Number 1018–0022, the Federal Fish and Wildlife License/Permit Application and related reports, Service form number 3–200. In an attempt to facilitate the comment process, and to make the application process more "user friendly," and to aid the public in commenting on specific license/permit requirements without having to comment on the entire package, similar types of permits have been grouped together and numbered. The applications have been divided into four groups: migratory bird permits, law enforcement permits, endangered species permits and management authority permits. This notice deals with migratory bird permits. The application to apply for Service permits issued under subchapter B of Title 50 of the Code of Federal Regulations (CFR), will still require completion of the 3–200 form. In addition to the permit application, attachments are often necessary to provide additional information required for each specific type of permit and these attachments have been assigned numbers, e.g., 3–200–2.

The information on the application form will be used by the Service to review permit applications and to make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance, suspension, revocation, or denial of permits. The frequency of response for the following types of permit applications/licenses is on occasion or annually.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB approval number and the agency informs the potential persons who are to respond to such collections that they are not required to respond to the collection of information unless it displays a currently valid OMB approval number. The following requirements are included in this submission:

1. Title: Permits to Import/Export Migratory Birds (Service form number 3–200–6).

Description and use: Used by the Service to determine whether an applicant can import/export migratory birds, their parts, nests, or eggs; implements regulations in 50 CFR 21.21. The information is also used as an enforcement and management aid in regulating the possession, transportation, and sale of lawfully acquired migratory birds and their parts, nets, or eggs.

Description of respondents: Individuals and households; business or other for-profit; not-for-profit institutions; and local or State government.

2. Title: Scientific Collecting permits (Service form number 3–200–7).

Description and use: Information will be used by the Service to determine if a permit to allow scientific collecting by an individual can be used; implements regulations in 50 CFR 21.23. Additional information is required beyond completion of the standard application form to determine whether there is a scientific or educational need for the issuance of a scientific collecting permit. An annual report is also required (Service form 430d).

Description of respondents: Individuals acting on behalf of an educational or scientific institution and/or agency.

2. Title: Taxidermist Permits (Service form number 3–200–8).

Description and use: Used to determine whether a permit can be issued to allow taxidermy on any migratory birds; implements regulations in 50 CFR 21.24. The information is also used as an enforcement and management aid in regulating the possession, transportation, and sale of lawfully acquired and mounted migratory birds and their parts, nests, or eggs.

Description of respondents: Individuals or households.

4. Waterfowl Sale and Disposal Permits (Service form number: 3–200–9)

Description and use: Used by the Service to determine whether a permit can be issued to allow the sale, trade, donation, or other disposal to another person of any species of captive-reared, properly marked waterfowl except mallards; implements regulations in 50 CFR 21.25. The information collected from persons wishing to sell captive-reared, properly marked migratory waterfowl is the minimum necessary that still allows the Service to fulfill the mandate of protecting waterfowl populations from illegal commercial exploitation. This information also enables the Service to ensure that an applicant is in compliance with any State laws requiring a person to obtain a game breeders license prior to conducting commercial sale activities. Once the permit is issued, the permittee is required to keep accurate records of activities conducted within the authority of the permit. This information is also used as an enforcement and management aid in regulating the sale, trade, or other transfer of captive-reared, properly marked waterfowl.

Note: An annual report is required for this activity.

Description of respondents: Individuals and households.

5. Title: Special Purpose Permits (Service form number 3–200–10a through f).

Description and use: Used by the Service to determine whether a permit can be issued for salvage; rehabilitation; possession of live birds, dead specimens, or preparation of artwork for education; or migratory game bird propagation; implements requirements in 50 CFR 21.27. This information is also used as an enforcement and management aid in regulating the taking, transportation, and possession of migratory birds.

Note: Annual reports are required for these activities.

Description of respondents: Individuals and households; business or other for-profit; not-for-profit institutions; and local and state government.

6. Title: Falconry Permits (Service form number 3–200–11).

Description and use: This information is used by the Service to determine if a falconry permit should be issued to an individual; implements requirements in 50 CFR 21.28. This information is also used by the Service as an enforcement and management aid in regulating the taking, transportation, and possession of wild migratory birds, and the sale, trade, or transfer of certain captive-bred migratory birds. Applicants that want a Federal falconry permit must apply through their State of residence. The applicant applies to their State, which must be included in the list of states that meet federal falconry standards [50 CFR 21.29(k)]. The applicant needs to complete the 3–200–11 and their State application. Once the State gives approval, the entire application is forwarded to the Service for joint issuance of the Federal/State permit. Officials from both the Service and State must sign the permit for it to be valid.

In addition, permittee is required to prepare and submit a Service form 3–186A documenting the acquisition and disposition of each bird. This information is needed by the Service to monitor the take, possession, purchase, sale, and other acquisition or disposition of raptors to prevent the illegal possession by unauthorized persons and the illegal taking of birds from the wild. One copy of the form is retained by the seller and another copy is kept by the purchaser to document the legal transaction. The use of this form precludes the need for an annual report that was previously required.

Description of respondents: Individuals and households.

7. Title: Raptor Propagation Permits (Service form number 3–200–13).

Description and use: Used by the Service to determine whether an applicant is qualified to propagate raptors; implements regulations in 50 CFR 21.30. The information is also used as an enforcement and management aid in regulating the possession, transportation, and sale of lawfully acquired migratory birds and their parts, nests, or eggs. In addition, the permittee is required to complete a form 3–186A as described above.

Description of respondents: Individuals and households; not-for-profit institutions.

8. Title: Depredation Permits (Service form number 3–200–13).

Description and use: Used by the Service to evaluate whether a permit can be issued to allow control of depredating migratory birds; implements regulations in 50 CFR 21.41.

Description of respondents: Individuals and households; business or other for-profit; not-for-profit institutions; farms; State, local or tribal government.

9. Title(s): Eagle Permits.

(1) Eagle Permits for Exhibition or Scientific Collecting/Research (Service form numbers 3–200–14a and 3–200–14b); (2) Eagle Permits for Native American Religious Purposes (Service form number 3–200–15); (3) Eagle Permits for Depredating Golden or Bald Eagles (Service form number 3–200–16); (4) Eagle Permits for the use of Depredating Golden Eagles for Falconry (Service form number 3–200–17); (5) Permits to Take Golden Eagle Nests (Service form number 3–200–18)

Description and use: Used by the Service to determine whether an applicant qualifies for a permit to take, possess, or transport bald or golden eagles or their parts, nests, or eggs, for exhibition, scientific collecting/research, Native American religious use, take of depredating bald or golden eagles, golden falconry, and take of golden eagle nests. This requirement implements regulations found in 50 CFR 22.21, 22.22, 22.23, 22.24 and 22.25.

Description of respondents: Individuals and households; businesses or other for-profit; not-for-profit institutions, farms; State, local or Tribal government.

The following chart lists the estimated reporting burden requested by the Service for each of the above requirements:

BURDEN ESTIMATE FOR FEDERAL FISH AND WILDLIFE LICENSE/PERMIT—MIGRATORY BIRDS

Permit/Report/No.	Number of respondents	Completion time	Annual burden
Import/Export 3–200–6	93	1.0	93
Scientific collecting 3–200–7	309	4.0	1,236
Annual report, 3–430d	850	1.0	850
Taxidermist, 3–200–8	2,286	1.0	2,286
Waterfowl sale & disposal, 3–200–9	704	1.0	704
Notice of transfer, 3–186	1,800	0.2	300
Annual report, 3–2020	1,500	0.5	750
Special purpose	2,753	2.5	6,883
Salvage, 3–200–10a			
Rehabilitation, –10b			
Ed/possession:			
(live) –10c			
(dead) –10d			
(prep for artwk) –10f			
Mig game bird propagation –10e			
Annual reports (3–202c, d) (3–430–b, d)	165,180	0.5	82,590
Falconry, 3–200–11	1,964	1.0	1,964
Disposition report, 3–186A	20,000	0.5	10,000
Raptor propagation, 3–200–12	143	1.0	143
Disposition report, 3–186A	10,000	0.5	5,000
Depredation, 3–200–13	1,406	1.0	1,406
Eagle Permits:			
Exhibition & scientific collecting/research, 3–200–14	156	1.0	156
Annual report (3–430d)	30	1.0	30
Native American religious purposes, 3–200–15	756	1.0	756
Take of depredating eagles, 3–200–16	11	1.0	11
Eagle falconry, 3–200–17	10	1.0	10
Take of golden eagle nests, 3–200–18	1	4.0	4
Totals	209,952		115,172

Dated: October 22, 1997.

Carolyn A. Bohan,

Deputy Assistant Director—Refuges and Wildlife.

[FR Doc. 97–28774 Filed 10–29–95; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591); Administrative Boundary Modification to the Coastal Barrier Resources System

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior, through the Fish and Wildlife Service, has completed modifications to the boundary of North Key Largo Unit FL–35 of the Coastal Barrier Resources System (System). This modification corrects an error that occurred in 1992 when the Department of the Interior revised the unit boundary in response to a State request under Section 4(c) of the Coastal Barrier Improvement Act to add property to the System. The purpose of this notice is to inform the public about the filing, distribution, and availability of maps reflecting the new boundary for Unit FL–35.

DATES: The boundary revision for this unit becomes effective immediately upon publication of this notice on October 30, 1997.

ADDRESSES: Copies of the revised map for this System unit are available for purchase from the U.S. Geological Survey, Earth Science Information Center, P.O. Box 25286, Denver, Colorado 80225. Official maps can be viewed at the Fish and Wildlife Service offices listed in the Supplementary Information section below.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Glomb, Department of the Interior, U.S. Fish and Wildlife Service, Division of Habitat Conservation, (703) 358–2201.

SUPPLEMENTARY INFORMATION: Section 4(a) of the Coastal Barrier Resources Act CBRA), 16 U.S.C. 3503(a), as amended by Section 3 of the Coastal Barrier Improvement Act of 1990 (CBIA), Pub. L. 101–591, 104 Stat. 2931, established the Coastal Barrier Resources System as consisting of coastal barriers and other areas located on the coasts of the Atlantic Ocean, Gulf of Mexico, and the Great Lakes that are identified and depicted on certain maps entitled "Coastal Barrier Resources System" and dated October 24, 1990. These areas constitute the Coastal Barrier Resources System and are subject to the limitations outlined in the CBRA. These maps are in the official custody of the U.S. Fish and Wildlife Service.

Section 4 of the CBIA defined the Department's responsibilities regarding the System maps for the period immediately following the 1990 enactment of the CBIA. Under Section 4(a), these responsibilities included preparing and distributing copies of the maps. Using the original maps submitted to the Department by the Congress, the Department reproduced these maps for distribution. Notification of the filing, distribution, and availability of the maps entitled "Coastal Barrier Resources System," dated October 24, 1990, was published in the **Federal Register** on June 6, 1991 (56 FR 26304–26312). Under Section 4(b), State and local governments could recommend minor and technical modifications to clarify boundaries of units of the System.

Under Section 4(c) of the CBIA, States were provided the authority to elect to add to the System lands owned or held by the State. This option was available for 18 months after enactment of the CBIA. Under Section 4(e)(1)(B)(ii), the Service was required to revise the maps of the System to reflect each election of

a State to add land to the System pursuant to Section 4(c).

On November 26, 1991, the State of Florida contacted the Service regarding the addition of several properties to the System, including a portion of Ocean Reef community that the State planned to purchase under its Conservation and Recreational Lands Program. The boundary for North Key Largo Unit FL–35, as originally established under the CBIA, excluded all of the Ocean Reef community from the System. Based on the State's representation that it intended to purchase the property, the Service added the Ocean Reef parcel to Unit FL–35 of the System, as described in the Service response to the State dated April 24, 1992 and the **Federal Register** notice published November 15, 1993 (58 FR 60288–60301).

The State subsequently decided against the purchase of the Ocean Reef parcel. If the State had not based its request for a boundary change for this unit on its plan to purchase the property, the Service would not have revised the boundary, and the original CBIA boundary for Unit FL–35 as approved by Congress would still be in effect. As a result of the State's decision not to purchase the property, the Service mistakenly added private property to the System, which is beyond the scope of its authority under Section 4(e) of the CBIA.

The Service stresses that it is not re-opening the process under Section 4(c) of the CBIA that allowed States to elect, within 18 months of enactment of the CBIA, to add State-owned property to the System. This boundary modification of Unit FL–35 instead corrects an error made earlier in the administrative process. This modification will return the boundary for North Key Largo Unit FL–35 to its original October 24, 1990, location for that portion of the unit in the vicinity of the Ocean Reef Harbor Course South development.

Copies of the revised System map for this unit are currently being printed. Upon completion of printing, copies of the map will be filed with the House of Representatives Committee on Resources and the Committee on Banking and Financial Services, and the Senate Committee on Environment and Public Works. Copies will also be distributed to the Chief Executive Officer (or representative) of each appropriate Federal, State, or local agency having jurisdiction over the area in which the modified unit is located. Copies of the map are also available for inspection at the following Service headquarters, regional, and field offices:

Washington Office

U.S. Fish and Wildlife Service, Division of Habitat Conservation, 4401 N. Fairfax Drive Room 400, Arlington, Virginia 22203, (703) 358–2201.

Regional Office

Region 4, U.S. Fish and Wildlife Service, 1875 Century Blvd., Atlanta, Georgia 30345, (404) 679–7125.

Field Office

Field Supervisor, U.S. Fish and Wildlife Service, 1360 U.S. Highway 1, #5, Vero Beach, FL 32961, (561) 562–3909.

Dated: October 14, 1997.

John G. Rogers,

U.S. Fish and Wildlife Service, U.S. Department of the Interior.

[FR Doc. 97–28766 Filed 10–29–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–835659

Applicant: Annette Y. Taylor, Dial Cordy, Wetland and Environmental Services, Inc., Wilmington, North Carolina

The applicant requests authorization to take (salvage dead shells, and harass during surveys) the dwarf wedge mussel, *Alasmidonta heterodon,* and the Tar River spinymussel, *Elliptio steinstansana,* throughout their ranges in North Carolina, for the purpose of enhancement of survival of the species.

PRT–801592

Applicant: Kent S. Karriker, CZR Incorporated, Wilmington, North Carolina.

The applicant requests authorization to take (salvage dead shells, and harass during surveys) the dwarf wedge mussel, *Alasmidonta heterodon,* and the Tar River spinymussel, *Elliptio steinstansana,* throughout their ranges in North Carolina, for the purpose of enhancement of survival of the species. This is a renewal and modification of previously authorized activities.

Written data or comments on these applications should be submitted to: Regional Permit Biologist, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received by December 1, 1997.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: October 22, 1997.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 97–28741 Filed 10–29–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection to be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 60 days directly to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic,

mechanical, or other forms of information technology.

Title: Production Estimate, Quarterly Construction Sand and Gravel and Crushed and Broken Stone.

OMB approval number: 1028–NEW (Current number 1032–0090).

Abstract: The collection is needed to provide data on mineral production for annual reports published by commodity for use by Government agencies, industry, education programs, and the general public. One publication is the "Mineral Commodity Summaries," the first preliminary publication to furnish estimates covering the previous year's nonfuel mineral industry.

Bureau form numbers: 6–1209–A and 6–1209–A–A.

Frequency: Quarterly and Annually.

Description of respondents: Producers of industrial minerals and metals.

Annual Responses: 3,418.

Annual burden hours: 855.

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 97–28777 Filed 10–29–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

2. the accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. the utility, quality, and clarity of the information to be collected; and,

4. how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Mine, Development, and Mineral Exploration Supplement.

Current OMB approval number: 1032–0081.

Abstract: Respondents supply the U.S. Geological Survey with domestic production, exploration, and mine development data on nonfuel mineral commodities. This information will be published as an Annual Report for use by Government agencies, industry, and the general public.

Bureau form number: 9–3075.

Frequency: Annual.

Description of respondents: Nonfuel Mineral Producers, Exploration and Development Operations.

Annual Responses: 874.

Annual burden hours: 437

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 97–28793 Filed 10–29–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Roll Submitted by the Little River Band of Ottawa Indians

AGENCY: Bureau of Indian Affairs., Interior

ACTION: Notice.

SUMMARY: Pursuant to section 9(b)(2) of Pub. L. 103–324 (108 Stat. 2156), as amended, notice is given of receipt of the membership list of the Little River Band of Ottawa Indians, containing 1,214 names of tribal members.

DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Anne E. Bolton, Superintendent, Michigan Agency, 2901.5 I–75 Business Spur, Sault Ste. Marie, Michigan 49783.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

The membership roll was received at the Bureau of Indian Affairs, Michigan Agency on May 2, 1996. After review, corrections to the roll were made: two names were listed twice and the second reference was removed and one name was removed because the person is enrolled with another band. The corrected list containing the names of 1,214 tribal members was approved by Tribal Council Resolution #97–0413–02 and submitted to the Michigan Agency on April 16, 1997.

Dated: October 23, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–28796 Filed 10–29–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–01–24–1A]

OMB Approval Number 1004–0137; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 3501 *et seq.*). On April 8, 1996, the BLM published a notice in the **Federal Register** (61 FR 15511) requesting comments on the collection. The comment period ended June 7, 1996. No comments were received. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM Clearance Officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days.

For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0137), Office of Information and Regulatory Affairs, Washington, D.C., 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Well Completion or Recompletion Report and Log, 43 CFR 3160.

OMB Approval Number: 1004–0137.

Abstract: Data submitted by oil and gas operators is used for agency approval of specific additional operations on a well and to report the completion of such additional work.

Bureau Form Number: 3160–4.

Frequency: Non-recurring.

Description of Respondents: Oil and gas operators.

Estimated Completion time: 1 hour.

Annual responses: 2,200.

Annual Burden Hours: 2,290.

Bureau Clearance Officer: Carole Smith, (202) 452–0367.

Dated: October 16, 1997.

Carole Smith,

Bureau of Land Management, Information Clearance Officer.

[FR Doc. 97–28732 Filed 10–29–97; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–931–1430–01; COC–57596]

Public Land Order No. 7293; Withdrawal of National Forest System Land for the Protection of the Nederland Work Center; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 52.31 acres of National Forest System land from mining for 20 years to protect existing and planned facilities at the Nederland Work Center. The land has been and remains open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: October 30, 1997.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

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 land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), for the Forest Service to protect planned and existing facilities at the Nederland Work Center:

Sixth Principal Meridian

Roosevelt National Forest

T. 1 S., R. 72 W.,

Sec. 7, lots 30 to 33, inclusive.

The area described contains 52.31 acres in Boulder County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under 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: October 21, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–28737 Filed 10–29–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–01; IDI–15468]

Public Land Order No. 7294; Revocation of Secretarial Order Dated February 18, 1909; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety a Secretarial order which withdrew 74.38 acres of National Forest System land for the Forest Service's Gorge Ranger Station. The land is no longer needed for the purpose for which it was withdrawn. This revocation is needed to transfer a portion of the land by sale under the Small Tract Act. This action will open the land to surface entry and mining. All of the land has been and will remain open to mineral leasing.

EFFECTIVE DATE: December 1, 1997.

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. The Secretarial Order dated February 18, 1909, which withdrew National Forest System land for administrative site purposes, is hereby revoked in its entirety:

Boise Meridian

T. 54 N., R. 3 E.,

Sec. 4, lots 3 and 4.

The area described contains 74.38 acres in Bonner County.

2. At 9:00 a.m. on December 1, 1997, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws, subject to valid rights, the provisions of existing withdrawals, other segregations or record, and the requirements of applicable law. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: October 21, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–28710 Filed 10–29–97; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–01; WYW 126227]

Public Land Order No. 7295; Withdrawal of Public Land for the Protection of Paleontological Resource Values; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 270 acres of public land from surface entry and mining for a period of 50 years to protect important paleontological resource values that were recently discovered on Big Cedar Ridge near Ten Sleep. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: October 30, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

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 public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, for the Bureau of Land Management to protect important paleontological resource values:

Sixth Principal Meridian

T. 45 N., R. 89 W.,
sec. 16, NW¼SW¼ and N½SW¼SW¼;
sec. 21, W½SE¼NW¼, SE¼SE¼NW¼, and E½SW¼;
sec. 28, E½NE¼NW¼, SE¼SE¼NW¼, SE¼SW¼SW¼, and SE¼SW¼;
sec. 33, NW¼NE¼NW¼ and NE¼NW¼NW¼.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 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: October 21, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–28780 Filed 10–29–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00] ES–48891, Group 29, Illinois

Notice of Filing of Plat of Survey; Illinois

The plat, in four sheets, of the dependent resurvey of a portion of U.S. Survey No. 578, and the survey of the Locks and Dam No. 27 acquisition boundary, Township 3 North, Ranges 9 and 10 West, Third Principal Meridian, Illinois, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on December 1, 1997.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor; Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., December 1, 1997.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: October 21, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–28778 Filed 10–29–97; 8:45 am]

BILLING CODE 4310–GJ–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–386]

Macadamia Nuts: Economic and Competitive Conditions Affecting the U.S. Industry

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

EFFECTIVE DATE: October 23, 1997.

SUMMARY: Following receipt on September 15, 1997, of a request from the Senate Committee on Finance (Committee), the Commission instituted investigation No. 332–386, Macadamia Nuts: Economic and Competitive Conditions Affecting the U.S. Industry, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of providing a report on factors affecting trade between the United States and major world markets for macadamia nuts. As requested by the Committee, the Commission's report on the investigation will include the following information:

(1) A description of the competitive factors affecting the domestic macadamia nut industry, including competition from imports of macadamia nuts;

(2) To the extent data are available, a description of the prices U.S. consumers pay for macadamia nuts compared with the prices paid for macadamia nuts by consumers in other major markets for macadamia nuts, and a description of the degree to which quotas, tariffs, or other trade barriers affect such prices;

(3) A description of the extent to which trade practices and barriers to trade by other competing countries are impeding the marketing of domestically produced macadamia nuts; and

(4) An analysis of current conditions of trade in macadamia nuts between the United States and macadamia nut exporting countries (in particular, Australia, Brazil, South Africa, and the Central American countries) and between the exporting countries and the rest of the world, as well as any recent changes in such conditions, including information on prices, cost of production, marketing practices, and market shares of foreign suppliers in the U.S. market.

As requested by the Committee, the Commission will submit the results of its investigation by September 30, 1998.

FOR FURTHER INFORMATION CONTACT: Information on industry aspects may be obtained from Stephen Burket, Office of Industries (202–205–3318) or John Reeder, Office of Industries (202–205–3319); and legal aspects, from William Gearhart. Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1820). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Public Hearings

Public hearings in connection with the investigation will be held in Kailua-Kona, Hawaii, and in Washington, DC.

Hawaii hearing.—The hearing will be held at King Kamehameha's Kona Beach Hotel, 75–5660 Palani Road, beginning at 8:30 a.m. on Wednesday, March 25, 1998. Requests to appear at the public hearing in Kailua-Kona should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m. (Eastern Standard Time) March 11, 1998. Persons testifying at the hearing are encouraged to file prehearing briefs or statements; the deadline for filing such briefs or statements (a signed original and 14 copies) is March 13, 1998. The deadline

for filing posthearing briefs or statements is 5:15 p.m. (Eastern Daylight Time) May 15, 1998. In the event that, as of the close of business March 11, 1998, no witnesses are scheduled to appear, the hearing will be canceled. Any person interested in attending the hearings as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after March 11, 1998 to determine whether the hearing will be held.

Washington, DC hearing.—The hearing will be held in Washington, DC at the International Trade Commission building, 500 E Street, SW, Washington, DC 20436, beginning at 9:30 am on Thursday, April 30, 1998. Requests to appear at the public hearing in Washington, DC should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436 no later than 5:15 p.m. (Eastern Standard Time) April 14, 1998. Persons testifying at the hearing are encouraged to file prehearing briefs or statements; the deadline for filing such briefs or statements (a signed original and 14 copies) is April 21, 1998. The deadline for filing posthearing briefs or statements is 5:15 p.m. (Eastern Daylight Time) May 15, 1998. In the event that, as of the close of business on April 14, 1998, no witnesses are scheduled to appear, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1816) to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the public hearings, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than May 15, 1998. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: October 24, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–28810 Filed 10–29–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–370]

In the Matter of Certain Salinomycin Biomass and Preparations Containing Same; Notice of Commission Hearing

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to hold a public hearing in the above-captioned investigation to allow parties to present oral argument on the recommendation of the presiding administrative law judge (ALJ) that the Commission order monetary sanctions.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 6, 1995, based on a complaint filed by Kaken Pharmaceutical Co. Inc. (Kaken). On November 6, 1995, the ALJ issued his final initial determination (ID) in this investigation, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, by respondents Hoechst Aktiengesellschaft, Hoechst Veterinar GmbH, and Hoechst-Roussel Agri-Vet Co. (collectively, Hoechst). His determination was based on his findings that the patent at issue was invalid for failure to disclose the best mode of operation and unenforceable due to inequitable conduct during prosecution of the patent. The ALJ's ID was not reviewed by the Commission and was ultimately upheld on appeal, *Kaken Pharmaceutical Co.* v. *USITC*, Appeal Nos. 96–1300–1302, nonprecedential opinion dated March 31, 1997.

On January 19, 1996, Hoechst filed a motion for sanctions against Kaken, which the Commission referred to the presiding ALJ for issuance of a recommended determination (RD). Hoechst's motion alleged, *inter alia*, that Kaken committed sanctionable conduct by filing a complaint totally lacking in merit. On May 14, 1997, the ALJ issued his RD in which he recommended that the Commission impose on Kaken and its attorneys joint and several liability for an amount of money equal to double the entire attorneys' fees and costs of the Hoechst respondents incurred in both the section 337 investigation on the merits and in the proceedings on sanctions. All parties filed comments on the RD. On August 8, 1997, Kaken and its attorneys requested leave to file a reply to Hoechst's comments and an opportunity for oral argument before the Commission. Hoechst and the Commission investigative attorney (IA) opposed the motion to file a reply brief, but agreed to the request for oral argument if the Commission believed oral argument would be useful in determining whether a sanction should issue, and if so, what the sanction should be. On August 29, 1997, Hoechst filed a motion to file a surreply in the event that the Commission granted Kaken's motion to file a reply. On September 11, 1997, Kaken and its attorneys responded that they had no objection to Hoechst's motion to file a surreply if the Commission also granted leave for Kaken and its attorneys to file their reply.

Commission Hearing

The Commission will hold a public hearing on Wednesday, December 10, 1997, in its main hearing room, 500 E Street, S.W., Washington, D.C., beginning at 9:30 a.m. The hearing will be limited to the issues raised by the presiding ALJ's recommendation on sanctions, dated May 14, 1997. The order and time limits for presentations shall be as follows:

Kaken and its attorneys—30 minutes.

The Office of Unfair Import Investigations—30 minutes.

Hoechst—30 minutes.

These time limits shall be exclusive of questioning by the Commission. Kaken and its attorneys and the IA may set aside part of their times for rebuttal. The hearing will be open to the public.

Notices of Appearance

Written requests to appear at the Commission hearing must be filed with the Office of the Secretary by December 2, 1997.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337 and Commission rule 210.25, 19 C.F.R. § 210.25.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: October 24, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–28811 Filed 10–29–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Remedial Design and Remedial Action Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") of 1980

In accordance with Department policy, 28 CFR 50.7, and 42 U.S.C. 9622(d), notice is hereby given that on October 9, 1997, a proposed CERCLA Remedial Design and Remedial Action Consent Decree ("RD/RA Consent Decree") in *United States* v. *Alaska Railroad Corporation, et al.*, Civil Action No. A91–589 CIV, was lodged with the United States District Court for the District of Alaska.

In this action, the United States seeks injunctive relief under Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), from the Alaska Railroad Corporation ("ARRC"), Bridgestone/Firestone, Inc., Chugach Electric Association, Inc., J.C. Penney and Co., Inc., Montgomery Ward and Co. ("Montgomery Ward"), Sears, Roebuck and Co., and Westinghouse Electric Corporation ("the Defendants") to abate the releases and threatened releases of hazardous substances into the environment at the Standard Steel Metals & Salvage Yard Superfund Site in Anchorage, Alaska ("the Site"). The United States also seeks reimbursement from the Defendants other than ARRC under Section 107(a) of CERCLA of response costs it has incurred and will continue to incur in connection with the Site and a declaration under Section 113(g) of CERCLA of the liability of those Defendants for further such response costs. (ARRC is responsible under an earlier Partial Consent Decree in this case to pay 2.5% of such costs.)

Under the RD/RA Consent Decree, the Defendants other than Montgomery Ward ("the Settling Defendant") will implement the remedy chosen by the Environmental Protection Agency for the Site in its July 16, 1996 Record of Decision. ARRC's responsibility for work to be performed at the Site is limited, however, to implementation of requirements of the Record of Decision that only it, as party in possession and control of the Site, can accomplish. The RD/RA Consent Decree also requires the Settling Defendants to reimburse the Hazardous Substances Superfund for 38.5% of the costs incurred by the United States in overseeing implementation of the remedy over and above $53,665.18. (This percentage includes that owned by ARRC. The remaining 61.5% of these costs are to be paid by the federal government pursuant to the aforementioned Partial Consent Decree.)

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed RD/RA Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to United States v. Alaska Railroad Corporation, *et al.* D.J. No. 90–11–3–810.

The proposed RD/RA Consent Decree may be examined at the Office of the United States Attorney for the District of Alaska, Room 253, Federal Building and U.S. Courthouse, 222 West Seventh Avenue, Anchorage, Alaska 99513–7567; at the Region 10 Office of the Environmental Protection Agency, Hazardous Waste Records Center, 1200 Sixth Avenue, Seventh Floor, Seattle, Washington, 98101; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (Tel: 202–624–0892). A copy of the proposed RD/RA Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W. 4th Floor, Washington, D.C. 20005. In requesting a copy exclusive of exhibits, please enclose a check in the amount of $26.75 (25 cents per page reproduction cost) payable to Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 97–28731 Filed 10–29–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium

Notice is hereby given that, on August 6, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), CommerceNet Consortium, ("CommerceNet") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following organizations have joined CommerceNet as Sponsor Members: MicroSystems Software, Inc., Framingham, MA; NeoMedia Technologies, Inc., Fort Meyers, FL; SOFTBANK Net Solutions, Buffalo, NY; Release Software Corporation, Melno Park, CA. The following organization has upgraded to an executive member: INTERSHOP Communications, Inc. The following organizations changed their names: News Datacom to NDS America; and DBM Group to Strategic Response.

No other changes have been made in either the membership or planned activities of CommerceNet. Membership remains open and CommerceNet intends to file additional written notifications disclosing all changes in membership.

On June 13, 1994, CommerceNet filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on August 31, 1994 (59 FR 45012). The last notification was filed with the Department on May 15, 1997, and a notice was published in the **Federal Register** on June 13, 1997 (62 FR 32370).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–28728 Filed 10–29–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Frame Relay Forum

Notice is hereby given that, on August 1, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Frame Relay Forum ("Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following have joined the Forum as Worldwide members: Spider Software Limited, Edinburgh, UK; and Datacraft Asia Ltd., Taikoo Shingh, Hong Kong. The following organization has joined as an Auditing member: State of Louisiana/ OTM, Baton Rouge, LA. The following organization has withdrawn its membership from the forum: AT&T Canada. Changes in membership are as follows; UUNET Technologies changed its membership from Worldwide to Affiliate, and Farallon Communications moved from Auditing to Worldwide Membership.

No other changes have been made in either membership or planned activities of the Forum. Membership remains open and the Forum intends to file additional written notifications disclosing all membership changes.

On April 10, 1992, the Forum filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on July 2, 1992 (57 FR 29537). The last notification was filed on June 10, 1997. A notice was published in the **Federal Register** on July 25, 1997 (62 FR 40107).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–28725 Filed 10–29–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Divisions

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gas Utilization Research Forum

Notice is hereby given that, on August 11, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Gas Utilization Research Forum ("GURF") has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damage under specified circumstances. Specifically, University of Bath, Bath, UNITED KINGDOM, is no longer participating in the Gas Utilization Research Forum.

No other changes have been made in either the membership or planned activity of the group. Membership in this group remains open, and GURF intends to file additional written notification disclosing all changes in membership. Information regarding membership in GURF may be obtained from the Secretary, Dennis Winegar, Manager, Technical Service & Project Development, Texaco Natural Gas International, P.O. Box 4700, Houston, TX 77210–4700, Telephone (713) 752–7654, Facsimile: (713) 752–4681.

On December 19, 1990, GURF filed its original notification pursuant to Section 69a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 16, 1991, (56 FR 1655).

The last notification was filed with the Department on June 24, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 10, 1997 (62 FR 47690).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–28727 Filed 10–29–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—MD Consult, LLC

Notice is hereby given that, on June 30, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), MD Consult, LC has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Mosby-Year Book, Inc., St. Louis, MI; W.B. Saunders, Philadelphia, PA; and WK Medical, Inc., Chicago, IL. MD Consult will consider applications for new membership as they are submitted.

The nature and objective of the joint venture is to produce the most advanced and comprehensive on-line information and communications service for physicians and others in the medical-scientific community and to increase the availability and distribution of leading medical references and daily medical news via the World Wide Web. To accomplish its objective, MD Consult intends to engage in the collection, exchange, and where appropriate, licensing and dissemination of research and intellectual property information, and to work closely with educational, governmental, and private agencies to enhance the accessibility of medical research information.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–28730 Filed 10–29–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Quinta Corporation

Notice is hereby given that, on July 29, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the QUINTA Corporation ("Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to § 6(b) of the Act, the identities of the parties are: QUINTA Corporation, San Jose CA; and SDL Inc., San Jose, CA.

The purpose of this Joint Venture is to develop and demonstrate a novel flying optical recording head. The activities of this venture will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Membership in the Consortium will remain open and the Consortium will file additional written notifications disclosing all changes in membership.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–28729 Filed 10–29–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Rotorcraft Industry Technology Association, Inc.

Notice is hereby given that, on August 12, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Rotorcraft Industry Technology Association, Inc. ("RITA") filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Smiths Industries Aerospace and Defense Systems, Inc., Grand Rapids, MI has become a Supporting Member of RITA.

No other changes have been made in either the membership or planned activity of the Joint Venture.

On September 28, 1995, RITA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 1996 (61 FR 14817).

The last notification was filed on May 2,1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 30, 1997, (62 FR 51146).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–28726 Filed 10–29–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Sunshine Act Meeting

[F.C.S.C. Meeting Notice No. 22–97]

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: Wednesday, November 5, 1997, 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 Amended Proposed Decisions and 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 October 27, 1997.

Judith H. Lock,

Administrative Officer.

[FR Doc. 97–28851 Filed 10–28–97; 10:41 am]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 97–59, Exemption Application No. D–10393]

AEW Capital Management, L.P. (AEW) Located in Boston, MA

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption to replace Prohibited Transaction Exemption (PTE) 93–40 involving Aldrich, Eastman & Waltch, L.P. and Aldrich, Eastman & Waltch, Inc. (collectively, Old AEW).

SUMMARY: This document contains an individual exemption which supersedes PTE 93–40 (58 FR 34821, June 29, 1993).[1] This exemption permits the replacement of Old AEW with an entity known as "AEW Capital Management, L.P."[2] The exemption provides conditional relief that is identical to that provided by PTE 93–40, and it will affect participants and beneficiaries of, and fiduciaries with respect to, plans utilizing real estate investment management services provided by AEW.

EFFECTIVE DATE: This exemption is effective as of December 10, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 5, 1997, the Department of Labor (the Department) published a notice of proposed exemption in the **Federal Register** (62 FR 47056) that would replace PTE 93–40. PTE 93–40 provided an exemption from certain prohibited transaction restrictions of section 406 of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code. The proposed exemption was requested in an application filed by AEW pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this replacement exemption is being issued solely by the Department.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility

[1] PTE 93–40 provided exemptive relief from section 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), by reason of section 4975(c)(1)(E) of the Code, with respect to the payment by employment benefit plans of certain initial investment fees and disposition fees to Old AEW. In addition, PTE 93–40 provided exemptive relief from the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, with respect to the investment by the plans in a multiple client commingled account managed by Old AEW.

[2] Effective December 10, 1996, old AEW was renamed "AEW Capital Management, L.P.", which is hereinafter referred to in this grant notice as AEW.

provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting a plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, the Department has found that the exemption is administratively feasible, in the interests of the plans and their participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plans; and

(3) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The exemption is applicable to the transactions previously described in PTE 93–40 only if the conditions specified herein are satisfied.

Exemption

Under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B, the Department hereby replaces PTE 93–40 as follows:

Part I. Exemption for Payment of Certain Fees to AEW

The restrictions of section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of certain initial investment fees (the Investment Fee) and disposition fees (the Disposition Fee) to AEW by employee benefit plans for which AEW provides investment management services (the Client Plans), pursuant to an investment management agreement (the Agreement) entered into between AEW and the Client Plans either individually, through the establishment of a single client separate account (Single Client Account), or collectively, as participants in a multiple client commingled account (Multiple Client Account), provided that the conditions set forth below in Part III are satisfied. (Single Client Accounts and Multiple Client Accounts are collectively referred to herein as Accounts).

Part II. Exemption for Investments in a Multiple Client Account

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any investment by a Client Plan in a Multiple Client Account managed by AEW, provided that the conditions set forth below in Part III are satisfied.

Part III. General Conditions

(a) The investment of plan assets in a Single or Multiple Client Account, including the terms and payment of any Investment Fee and Disposition Fee, shall be approved in writing by a fiduciary of a Client Plan which is independent of AEW and its affiliates and, in the case of a Multiple Client Account for which ultimate investment discretion is exercised by a bank trustee, a fiduciary which is independent of the bank trustee and AEW and its affiliates (the Independent Fiduciary). Notwithstanding the foregoing, AEW may authorize the transfer of cash from a Single Client Account to a Multiple Client Account, provided that: (1) the Multiple Client Account has similar investment objectives and the identical fee structure as the Single Client Account; (2) the Agreement governing the Single Client Account authorizes AEW to invest in a Multiple Client Account; (3) AEW receives no additional fees from the Single Client Account for cash invested in the Multiple Client Account and no additional Investment Fee is paid with respect to cash transferred to the Multiple Client Account; (4) a binding commitment to make the transfer to the Multiple Client Account is made by AEW within six months of the Independent Fiduciary's decision to allocate assets to the Single Client Account or, in the event that AEW's binding commitment to make the transfer occurs more than six months after such Fiduciary's decision, AEW obtains an additional authorization from the Independent Fiduciary; and (5) each transfer of assets from the Single Client Account to the Multiple Client Account occurs within 60 days of the actual transfer of such assets to the Single Client Account.

(b) The terms of any investment in an Account and of any Investment Fee or Disposition Fee shall be at least as favorable to the Client Plans as those obtainable in arm's length transactions between unrelated parties.

(c) At the time any Account is established and at the time of any subsequent investment of assets (including the reinvestment of assets) in such Account:

(1) Each Client Plan shall have total net assets with a value in excess of $50 million; and

(2) No Client Plan shall invest, in the aggregate, more than five percent of its total assets in any Account or more than 10 percent of its total assets in all Accounts established by AEW.

(d) Prior to making an investment in any Account, the Independent Fiduciary of each Client Plan investing in an Account shall receive offering materials from AEW which disclose all material facts concerning the purpose, structure, and operation of the Account, including any fee arrangements.

(e) With respect to its ongoing participation in an Account, each Client Plan shall receive the following written information from AEW:

(1) Audited financial statements of the Account prepared by independent public accountants selected by AEW no later than 90 days after the end of the fiscal year of the Account;

(2) Quarterly and annual reports prepared by AEW relating to the overall financial position and operating results of the Account and, in the case of a Multiple Client Account, the value of each Client Plan's interest in the Account. Each such report shall include a statement regarding the amount of fees paid to AEW during the period covered by such report;

(3) Annual appraisals indicating the fair market value of the Account's assets as established by an M.A.I. licensed real estate appraiser independent of AEW and its affiliates which has been approved by the Client Plan prior to investing in the Account, provided that if a new appraiser for a property is chosen by AEW, the appraiser shall be approved by the Independent Fiduciary of the Client Plan or the responsible independent fiduciaries of Client Plans and other authorized persons acting for investors in a Multiple Client Account (the Responsible Independent Fiduciaries, as defined in Part IV(e) below), prior to any valuation of such property; and

(4) In the case of any Multiple Client Account, a list of all other investors in the Account.

(f) The total fees paid to AEW shall constitute no more than reasonable compensation.

(g) The Investment Fee shall be equal to a specified percentage of the net value of the Client Plan assets allocated to the Account, which shall be payable either:

(1) At the time assets are deposited (or deemed deposited in the case of reinvestment of assets) in the Account; or

(2) In periodic installments, the amount (as a percentage of the aggregate Investment Fee) and timing of which have been specified in advance based on the percentage of the Client Plan's assets invested in real property as of the payment date, provided that (i) the installment period is no less than three months, and (ii) if the percentage of the Client Plan assets which have actually been invested by a payment date is less than the percentage required for the aggregate Investment Fee to be paid in full through that date (both determined on a cumulative basis), the Investment Fee paid on such date shall be reduced by the amount necessary to cause the percentage of the aggregate Investment Fee paid to equal only the percentage of the Client Plan assets actually invested by that date. The unpaid portion of such Investment Fee shall be deferred to and payable on a cumulative basis on the next scheduled payment date (subject to the percentage limitation described in the preceding sentence).

(h) The Disposition Fee shall be payable after the Client Plan has received distributions from the Account in excess of an amount equal to 100 percent of its invested capital plus a pre-specified annual compounded cumulative rate of return (the Threshold Amount), except that in the case of AEW's removal or resignation, AEW shall be entitled to receive a Disposition Fee payable either at the time of removal or, in the event of AEW's resignation, upon sale of the assets to which the fee is allocable or upon termination of the Account as the case may be, subject to the requirements of paragraph (k) below, as determined by a deemed distribution of the assets of the Account based on an assumed sale of such assets at their fair market value (in accordance with independent appraisals), only to the extent that the Client Plan would receive distributions from the Account in excess of an amount equal to the Threshold Amount at the time of AEW's removal or resignation. Both the Threshold Amount and the amount of the Disposition Fee, expressed as a percentage of the amount distributed (or deemed distributed) from the Account in excess of the Threshold Amount, shall be established by the Agreement and agreed to by the Independent Fiduciary of the Client Plan.

(i) The Threshold Amount for any Disposition Fee shall include at least a minimum rate of return to the Client Plan, as defined below in Part IV(f).

(j) For any sale of property in an Account which shall give rise to the payment of a Disposition Fee to AEW prior to the termination of the Account, the sales price of the property shall be at least equal to a target amount (the Target Amount), as defined in Part IV(g), in order for AEW to sell the property and receive its Disposition Fee. If the proposed sales price of the property is less than the Target Amount, the proposed sale shall be disclosed to and approved by the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account, in which event AEW shall be entitled to sell the property and receive its Disposition Fee. If the proposed sales price is less than the Target Amount and the Independent Fiduciary's or Responsible Independent Fiduciaries' approval is not obtained, AEW shall still have the authority to sell the property, if the Agreement provides AEW with complete investment discretion for the Account, provided that the Disposition Fee which would have been payable to AEW is paid only at the termination of the Account.

(k) In the event AEW resigns as investment manager for an Account, the Disposition Fee shall be calculated at the time of resignation as described above in paragraph (h) and allocated to each property based upon the relationship that the appraised value of such property bears to the total appraised value of the Account. Each amount arrived at through this calculation shall be multiplied by a fraction, the numerator of which shall be the actual sales price received by the Account on disposition of the property (or in the case of a property which has not been sold prior to the termination of the Account, the appraised value of the property as of the termination date) and to the denominator of which shall be the appraised value of the property which was used in connection with determining the Disposition Fee at the time of resignation, provided that this fraction shall never exceed 1.0. The resulting amount for each property shall be the Disposition Fee payable to AEW upon sale of such property or termination of the Account, as the case may be.

(l) AEW or its affiliates shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (m) of this Part III to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of AEW or its affiliates, the records are lost or destroyed prior to the end of the six year period; and (2) no party in interest, other than AEW, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (m) below.

(m)(1) Except as provided in paragraph (m)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (l) of this Part III shall be unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of a Client Plan or any duly authorized employee or representative of such fiduciary;

(iii) Any contributing employer to a Client Plan or any duly authorized employee or representative of such employer; and

(iv) Any participant or beneficiary of a Client Plan or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in paragraph (m)(1)(ii)–(iv) shall be authorized to examine the trade secrets of AEW and its affiliates or any commercial or financial information which is privileged or confidential.

Part IV. Definitions

For purposes of this exemption:

(a) An "affiliate" of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner of such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "management services" means:

(1) Development of an investment strategy for the Account and identification of suitable real estate-related investments;

(2) Directing the investments of the assets of the Account, including the determination of the structure of each investment, the negotiation of its terms and conditions and the performance of all requisite due diligence;

(3) Timing and directing the disposition of any assets of the Account

and directing the liquidation of the Account;

(4) Administration of the overall operation of the investments of the Account, including all applicable leasing, management, financing, and capital improvement decisions;

(5) Establishing and maintaining accounting records of the Accounts and distributing reports to Client Plans as described in Part III; and

(6) Selecting and directing all service providers of ancillary services as defined in this Part IV.

(d) The term "ancillary services" means:

(1) Legal services;

(2) Services of architects, designers, engineers, hazardous materials consultants, contractors, leasing agents, real estate brokers, and others in connection with the acquisition, construction, improvement, management and disposition of investments in real property;

(3) Insurance brokerage and consultation services;

(4) Services of independent auditors and accountants in connection with auditing the books and records of the Accounts and preparing tax returns;

(5) Appraisal and mortgage brokerage services; and

(6) Services for the development of income-producing real property.

(e) The term "Responsible Independent Fiduciaries" means with respect to a Multiple Client Account the Independent Fiduciary of each Client Plan invested in the Account and other authorized persons acting for investors in the Account which are not employee benefit plans as defined under section 3(3) of the Act (such as governmental plans, university endowment funds, etc.) that are independent of AEW and its affiliates and are persons other than the bank trustee for the Account, and that collectively hold at least 50% of the interests in the Account.

(f) The term "Threshold Amount" means with respect to any Disposition Fee an amount which equals all of a Client Plan's capital invested in an Account plus a pre-specified annual compounded cumulative rate of return that is at least a minimum rate of return determined as follows:

(1) A non-fixed rate which is at least equal to the rate of change in the consumer price index (CPI) during the period from the deposit of the Client Plan's assets into the Account until distributions of the Client Plan's assets from the Account equal or exceed the Threshold Amount; or

(2) A fixed rate which is at least equal to the rate of change in the CPI over some period of time specified in the Agreement, which shall not exceed 10 years.

(g) The term "Target Amount" means a value assigned to each property in the Account established by AEW either (1) at the time the property is acquired, by mutual agreement between AEW and the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account, or (2) pursuant to an objective formula approved by such Fiduciaries at the time the Account is established. However, in no event will such value be less than the acquisition price of the property.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 93–40, refer to the notice of proposed exemption and grant notice which are cited above.

Signed at Washington, D.C., this 23rd day of October 1997.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–28592 Filed 10–29–97; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–158)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Corken, Inc., a subsidiary of IDEX Corporation, having its principal place of business at 3805 N.W. 36th Street, Oklahoma City, OK 73112, has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,171,822, entitled "LOW TOXICITY HIGH TEMPERATURE PMR POLYIMIDE," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATE: Responses to this notice must be received by December 29, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. George F. Helfrich, Patent Counsel, Langley Research Center, Mail Stop 212, Hampton, VA 23681–0002, telephone (757) 864–9260; fax (757) 864–9190.

Dated: October 23, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–28680 Filed 10–29–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–159)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Grand Illusion/Living Window, Inc., of Dover, New Hampshire 03820, has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,559,923, entitled "VAPOR GENERATOR WAND," for which a United States Patent was issued on September 24, 1996, to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATES: Responses to this notice must be received by December 29, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly A. Chasteen, Patent Attorney, NASA Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001. Telephone (757) 864–3227; fax (757) 864–9190.

Dated: October 23, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–28819 Filed 10–29–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title

45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by November 28, 1997. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to the Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1033.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

Permit Application: 98–017

1. *Applicant*

Charles R. Stearns, Department of Atmosphere and Oceanic Sciences, University of Wisconsin, 122 West Dayton Street, Madison, WI 53706

Activity for Which Permit Is Requested

Enter Specially Protected Area and Site of Special Scientific Interest

The applicant proposes to install an Automatic Weather Station (AWS) at Cape Bird, Ross Island. Studies of weather in the vicinity of McMurdo indicate and AWS located at Cape Bird will be of great value in studying the local climate and in providing valuable data for forecasting weather in the Ross Island Area. Installation of the AWS requires a uniform area about 100x100m. Although the applicant intends to install the AWS outside the SPA and SSSI, however, due to unfamiliarity with the terrain, may require placement of the AWS in either the New College Valley Specially Protected Area No. 20, or in the Caughley Beach Site of Special Scientific Interest.

Location

New College Valley (SPA #20) and Caughley Beach (SSSI #10), Cape Bird, Ross Island, Antarctica.

Dates

January 1, 1998 to January 31, 1998.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 97–28768 Filed 10–29–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences (1186); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Astronomical Sciences.

Date and Time: November 20 and 21, 1997 8:30 AM–5:00 PM.

Place: Room 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: James P. Wright, Program Director, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: 703/306–1819.

Purpose of Meeting: To provide advice and recommendations on proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate proposals in the Career Program in the area of Astronomical Sciences.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 27, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28805 Filed 10–29–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering & Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended) the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Bioengineering & Environmental Systems (#1189).

Date & Time: November 17, 1997; 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.

Contact Person: David J. Boron, Acting Program Director, Environmental Technology Program, Division of Bioengineering & Environmental Systems, Room 565, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CAREER proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: October 27, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28802 Filed 10–29–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meetings

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During November 1997, the Special Emphasis Panel will be holding panel meetings to review and evaluate Faculty Early Career Development proposals. Specifics are as follows:

Special Emphasis Panel in Chemical and Transport Systems (1190).

1. *Date:* November 22, 1997.

Place: Windham-Anatole Hotel, Dallas, Texas.

Contact: Dr. Ashley Emery, Program Director, Division of Chemical and Transport Systems, Room 525, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1371.

Type of Proposal: Thermal Transport & Thermal Processing.

2. *Date:* November 24, 1997.

Place: Rooms 530, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Contact: Dr. Farley Fisher. Program Director, Division of Chemical and Transport Systems, Room 525, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1371.

Type of Proposal: Combustion and Plasma Systems.

Times: 8:30 to 5:00 p.m each day.

Type of meetings: Closed.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 27, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28807 Filed 10–29–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date & Time: November 19–20, 1997; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA.

Contact Person: Dr. Ken Chong, Program Director, Structural Systems Program, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1316.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Structural Systems CAREER proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government Sunshine Act.

Dated: October 27, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28804 Filed 10–29–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources (#1119).

Date & Time: November 17, 1997—10:15 a.m.–4:00 p.m.; November 18, 1997—8:30 a.m.–3:00 p.m.

Place: Arlington Hilton Hotel, 950 N. Stafford Street, Arlington, VA 22230.

Type of Meeting: Open.

Contact Persons: Lucretia Dawson, Administrative Officers, Directorate of Education and Human Resources, Room 805, Foundation, 4201 Wilson Blvd., Arlington, VA 22230, (703) 306–1601.

Summary Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning NSF support for Education and Human Resources.

Agenda: Review of FY 1997 Programs and Initiative Strategic Planning for FY 1998 and Beyond.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28801 Filed 10–29–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in the Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in the Geosciences (1569).

Date & Time: November 17-19, 1997; 8:30 am–6:00 pm.

Place: NSF-Arizona AMS Facility, Physics Bldg., University of Arizona, Tucson, AZ.

Type of Meeting: Closed.

Contact Persons: Russell Kelz, Division of Earth Sciences, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1555 x7043.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Instrumentation and Facilities Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 27, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28800 Filed 10–29–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: November 18–20, 1997; 8:30 am to 5:30 pm each day.

Place: National Center for Atmospheric Research (NCAR), Mesa Laboratory, Damon Room, Boulder, CO 80307–3000.

Type of Meeting: Closed.

Contact Person: Mrs. Jewel C. Prendeville, Program Coordinator for the UCAR and Lower Atmosphere Facilities Oversight Section, Division of Atmospheric Sciences, Room 775, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone (703) 306–1521.

Purpose of Meeting: To provide and make recommendations concerning the renewal proposal of the five year Cooperative Agreement from the University Corporation for Atmospheric Research (UCAR) for the management and operation of the National Center for Atmospheric Research (NCAR).

Agenda: To review and evaluate the renewal proposal for the five year Cooperative Agreement from the University Corporation for Atmospheric Research (UCAR) for the management and operation of the National Center for Atmospheric Research (NCAR).

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data; such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 27, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28803 Filed 10–29–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science

Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (1756).

Date & Time: Friday, November 21; 8:30 AM—5:00 PM.

Place: Room 360, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Section Head, Division of Ocean Sciences, National Science Foundation, 4201 Wilson Blvd., Room 725, Arlington, VA 22230. Telephone: (703) 306–1582.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate OCE's Career proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in The Sunshine Act.

Dated: October 27, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28806 Filed 10–29–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Networking & Communications Research & Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Networking and Communications (#1207).

Date and Time: November 17 & 18, 1997; 8:30 a.m. to 5:00 p.m.

Place: Room 1150 and Room 1120, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person(s): Tatsuya Suda, Program Director, CISE/NCRI, Room 1175, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted for the Career Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 27, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28798 Filed 10–29–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

President's Committee on the National Medal of Science; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: Monday, November 17, 1997, 8:30 a.m.–3:00 p.m.

Place: Room 1235, National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Program Manager, Room 1220, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230 Telephone: 703/306–1096.

Purpose of Meeting: To provide advice and recommendations to the President in the selection of the National Medal of Science recipients.

Agenda: To review and evaluate nominations for the medal of science award as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: October 27, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28797 Filed 10–29–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral, and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Social, Behavioral, and Economic Sciences (1171).

Date & Time: November 17, 1997; 9:00 a.m.–5:00 p.m.; November 18, 1997; 9:00 a.m.–5:00 p.m.

Place: NSF, Room 375, NSF, 4201 Wilson Blvd., Arlington, Va. 22230.

Type of Meeting: Open.

Contact Person: Ms. Catherine J. Hines, Executive Secretary; Directorate for Social, Behavioral, and Economic Sciences, NSF, Suite 905; 4201 Wilson Blvd., Arlington, Va. 22230. Telephone: (703) 306–1741.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to SBE programs and activities.

Agenda: Discussions on issues, role and future direction of the NSF Directorate for Social, Behavioral and Economic Sciences.

Dated: October 27, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28799 Filed 10–29–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light Company; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 176 to Facility Operating License No. DPR–23 issued to Carolina Power & Light Company (the licensee), which revised the operating license and Appendices A and B to the operating license for the H.B. Robinson Steam Electric Plant, Unit 2 (HBR), located in Darlington County, South Carolina. The amendment is effective as of the date of issuance.

The amendment implements a full conversion of the HBR Technical Specifications (TS) to a set of TS based upon NUREG–1431, "Standard Technical Specifications Westinghouse Plants," Revision 0, dated September 1992 (including travellers used in the issuance of Revision 1, dated April 1995).

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on October 29, 1996 (61 FR 55830). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the

environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (62 FR 50409).

For further details with respect to the action see (1) the application for amendment dated August 27, 1996, as supplemented by letters dated December 18, 1996, January 17, February 18, March 27, April 4, April 25, April 29, May 30, June 2, June 13, June 18, August 4, August 8, September 10, October 2 (RNP RA/97–0216), October 2 (RNP RA/97–0207), October 13, and October 21, 1997, (2) Amendment No. 176 to License No. DPR–23, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Dated at Rockville, Maryland, this 24th day of October 1997.

For the Nuclear Regulatory Commission.

David C. Trimble,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–28754 Filed 10–29–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (the licensee) to withdraw its April 28, 1997, application for proposed amendment to Facility Operating License No. NPF–49 for the Millstone Nuclear Power Station, Unit 3, located in New London County, Connecticut.

Technical Specification Surveillances 4.1.2.3.1, 4.1.2.4.1, 4.5.2.f, and 4.5.2.h require the charging and safety injection pumps to be tested on a periodic basis and after modifications that alter subsystem flow characteristics. The proposed amendment would have made changes to these surveillance requirements.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 4, 1997 (62 FR 30635). However, by letter dated October 15, 1997, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 28, 1997, and the licensee's letter dated October 15, 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, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 23rd day of October 1997.

For the Nuclear Regulatory Commission.

James W. Andersen,

Project Manager, Special Projects Office—Licensing Office of Nuclear Reactor Regulation.

[FR Doc. 97–28757 Filed 10–29–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (the licensee) to withdraw its May 30, 1997, application for proposed amendment to Facility Operating License No. NPF–49 for the Millstone Nuclear Power Station, Unit 3, located in New London County, Connecticut.

Technical Specification (TS) Surveillances 4.5.2.f and 4.6.2.2.b require the periodic flow testing of the recirculation spray system pumps. The proposed amendment would have changed the surveillances by replacing the pump differential acceptance criteria with a pump acceptance curve.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 2, 1997 (62 FR 35849). However, by letter dated October 15, 1997, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 30, 1997, and the licensee's letter dated October 15, 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 2-Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 23rd day of October 1997.

For the Nuclear Regulatory Commission.

James W. Andersen,

Project Manager, Special Projects Office—Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 97–28758 Filed 10–29–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7002]

Notice of Amendment to Certificate of Compliance GDP–2 for the U.S. Enrichment Corporation, Portsmouth Gaseous Diffusion Plant, Portsmouth, Ohio

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) there is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs. The

basis for this determination for the amendment request is described below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Portsmouth Gaseous Diffusion Plant (PORTS). The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) the interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building; 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see: (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: June 9, 1997.

Brief description of amendment: The proposed amendment, in accordance with a commitment made in the USEC certificate application, revises Technical Safety Requirement (TSR) 2.1.3.5 entitled "Autoclave Shell High Pressure Containment Shutdown," to account for the added capability to separately test inner and outer loop containment valves on autoclaves in buildings X–342, X–343, and X–344.

The Portsmouth Gaseous Diffusion Plant uses thirteen autoclaves in buildings X–342, X–343 and X–344 to feed, transfer and sample UF_6. These autoclaves were designed and constructed in accordance with ASME Section VIII and are utilized to confine UF_6 and any reaction products in the event of a major UF_6 release inside an autoclave. Steam used to heat a UF_6 cylinder within an autoclave is typically controlled at approximately 5 psig. However, if a large UF_6 release occurs inside an autoclave, its internal pressure could rise to as high as 90 psig very rapidly. To ensure that the contents of a release are confined inside the autoclave, except for that which is released due to the proper operation of the autoclave pressure relief system (rupture disc rated at near 150 psig and relief valve), each line which penetrates the autoclave boundary is equipped with at least two valves that can serve as isolation valves. These close automatically to isolate the autoclave in the event of high internal pressure; the actuation pressure being less than or equal to 15 psig.

As noted in the Description of Noncompliance for Issue 3 of the "Plan for Achieving Compliance with NRC Regulations at the Portsmouth Gaseous Diffusion Plant" Revision 3 (Compliance Plan) dated July 9, 1996, the capability to pressure decay test the autoclave containment valves (i.e., inner and outer loop valves) separately did not exist. According to item 1 of the Plan of Action and Schedule (POA) for Issue 3 of the Compliance Plan, USEC was committed to providing this capability before July 1, 1997, and submitting to the NRC, a revised TSR to reflect the new autoclave containment valve configuration. In addition, the POA stated that until the capability to separately test the inner and outer loop containment valve is provided, the applicable TSR requirement will be to declare an autoclave inoperable and taken out of service when, in any mode of operation, either containment valve is determined to be inoperable or, in the heating mode, either pressure instrument channel is determined to be inoperable. According to USEC's certificate amendment request, since this capability has been provided, the Action conditions of TSR 2.1.3.5 should allow completion of the current operating cycle if only one instrument channel, or one containment isolation valve on one or more autoclave penetrations, is operable. However, if both instrument channels or all containment isolation valves on any one autoclave penetration are inoperable, then TSR 2.1.3.5 requires USEC to shut down the autoclave within one hour.

Basis for Finding of No Significance

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

Each line penetration for the thirteen autoclaves at PORTS, has at least two valves, that when actuated, would isolate the autoclaves. In addition, each autoclave has, as part of the autoclave shell high pressure containment shutdown system, two independent high pressure containment actuation channels. The proposed change to TSR 2.1.3.5 allows completion of the current autoclave operating cycle if one instrument channel, or one containment isolation valve on one or more autoclave penetrations, is inoperable. It is noted that the proposed TSR 2.1.3.5 still requires at least two channels and two isolation valves on each autoclave penetration to be operable prior to initiating a new operating cycle. Allowing an autoclave cycle to be completed, with one instrument channel and one containment valve operable, instead of requiring it to be shut down within one hour, will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite for the reasons given in the following paragraph.

The UF_6 containment boundaries provided by the cylinder, pigtail and valves inside an autoclave, and steam and UF_6 reaction product confinement boundaries provided by the autoclave shell and piping and valves out to and

including the second containment valve, are designated as "Q" systems. As such, USEC is required to apply the highest level of quality control (ASME NQA–1) to ensure that the pressure boundaries within these systems are maintained. Taking into consideration the applicable safety features (administrative and installed hardware) for preventing and mitigating UF_6 releases associated with autoclaves, and past operational history at PORTS, the staff concludes that a major accidental release of UF_6 inside an autoclave is highly unlikely. The probability of inoperability of a containment valve or an instrument channel during an operating cycle is also low (none have been reported since March 3, 1997). According to the surveillance requirements of TSR 2.1.3.5, these containment valves are required to be calibrated semiannually at or below 15 psig, and to be quarterly functionally tested and separately pressure decay tested at 90 psig with an acceptable leak rate of 10 psig/hour or 12 standard cubic feet per minute. It should be noted that requiring an autoclave to prematurely shut down prior to completing an operating cycle could introduce added risk by necessitating additional handling of cylinders containing liquid UF_6 for feed, sampling and transfer autoclaves, or by introducing cascade process upsets for feed autoclaves.

The staff has concluded that since completing the current operating cycle following inoperability of one instrument channel or one containment valve on an autoclave penetration will not significantly increase the risk of a UF_6 release, this amendment will not result in a significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not significantly increase the risk of a UF_6 release. Therefore, allowing an autoclave cycle to be completed, instead of requiring it to be shut down within one hour after discovery of one inoperable instrument channel or containment valve, will not result in a significant increase in individual or cumulative occupational radiation exposures.

3. The proposed amendment will not result in a significant construction impact.

The proposed amendment does not involve any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not significantly increase the risk of a UF_6 release. Therefore, allowing an autoclave cycle to be completed, instead of requiring it to be shut down within one hour after discovering one inoperable instrument channel or containment valve, will not significantly increase the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

Based on the staff's review of the proposed amendment, no new or different accidents were identified.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not significantly increase the risk of a UF_6 release. Based on the staff's review of the proposed amendment, the staff concludes that there will be no significant reduction of any margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs.

For similar reasons provided in the assessment of criterion 1, the proposed amendment will not significantly increase the risk of a UF_6 release. In addition, the staff has not identified any criticality related implications from the proposed amendment. Based on the staff's review of the proposed amendment, the staff concludes that there will be no decrease in the effectiveness of the overall plant's safety program.

The staff has not identified any safeguards or security related implications from the proposed amendment. Therefore, the proposed amendment will not result in an overall decrease in the effectiveness of the plant's safeguards, or security programs.

Effective date: The amendment to GDP–2 will become effective 60 days after issuance by NRC.

Certificate of Compliance No. GDP–2: Amendment will revise the Technical Safety Requirements.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 23d day of October 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–28756 Filed 10–29–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Privacy Act of 1974, As Amended; Minor Revisions to Existing System of Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Minor revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Nuclear Regulatory Commission (NRC) is revising and republishing in its entirety the system of records (system) notice for NRC–22, "Personnel Performance Appraisals—NRC," to reflect minor corrective and administrative changes that will more accurately and clearly describe the following sections of the system notice: System Location, Categories of Individuals Covered by the System, Authority for Maintenance of the System, Routine Uses of Records Maintained in the System, Storage, Retrieval, Safeguards, Retention and Disposal, System Manager(s) and Address, Notification Procedure, Record Access Procedures, and Contesting Record Procedures.

EFFECTIVE DATE: October 30, 1997.

FOR FURTHER INFORMATION CONTACT: Jona L. Souder, Freedom of Information/Local Public Document Room Branch, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7170.

SUPPLEMENTARY INFORMATION: The NRC's system of records notice for NRC–22, "Personnel Performance Appraisals—NRC," is being revised in its entirety to more accurately and clearly describe the system. The revisions reflect organizational and address changes within the agency since the notice was last published in the **Federal Register** on July 7, 1993 (58 FR 36469), as well as the current General Records Schedule (GRS) authorized disposition for performance appraisal records. The revisions to the system notice consist of minor corrective and administrative changes that do not require the submission of an altered system of records report pursuant to subsection (r)

of the Privacy Act and Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals."

Accordingly, the NRC is revising the system notice for NRC–22 in its entirety to read as follows:

NRC–22

SYSTEM NAME:

Personnel Performance Appraisals—NRC.

SYSTEM LOCATION:

Primary system—Part A: For Headquarters personnel, Office of Human Resources, NRC, 11545 and 11555 Rockville Pike, Rockville, Maryland. For Regional personnel, at Regional Offices I–IV listed in Addendum I, Part 2.

Part B: Office of Human Resources, NRC, 11545 and 11555 Rockville Pike, Rockville, Maryland.

Duplicate systems: Duplicate systems exist in whole or in part at the locations listed in Addendum I, except for Part B which is stored only at Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees other than contractor employees, Commissioners, or temporary personnel employed for less than 1 year.

Part A: Senior Level System employees, GG–1 through GG–15 employees, hourly wage employees, scientific and technical schedule employees, and administratively determined rate employees.

Part B: Senior Executive Service and equivalent employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains performance appraisals, including elements and standards, and other related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 4301, *et seq.*; 5 U.S.C 4311 *et seq.* (1994); 42 U.S.C. 2201(d), 5841 (1994); and 5 CFR 293.404(a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. By agency management and the Office of Human Resources for personnel functions; and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained in computerized form and in paper copy in locking file cabinets. Computerized form includes information stored in memory, on disk and magnetic tape, and on computer printouts. Summary ratings are stored in a computer system protected by password and user identification codes.

RETRIEVABILITY:

Records are accessed by name. Some computer records are accessed by name and social security number.

SAFEGUARDS:

Records are maintained in areas where access is controlled by keycard and is limited to NRC and contractor personnel and to others who need the information to perform their official duties. Access to the two Headquarters buildings in Rockville, Maryland, is controlled by a security guard force. Paper records are maintained in folders in locking file cabinets. Access to computerized records requires use of proper passwords and user identification codes.

RETENTION AND DISPOSAL:

a. Part A: Records are normally retained for 4 years, then destroyed by incineration in accordance with General Records Schedule (GRS) 1–23.a(4). If an employee separates, the records are forwarded to the next Government Agency employer or to the National Personnel Records Center in accordance with GRS 1–23.a(3)(a).

b. Part B: Retained for 5 years, or until the fifth annual appraisal is completed, whichever is later, then destroyed by incineration in accordance with GRS 1–23.b(3). If the employee separates, the records are forwarded to the next Government Agency employer or to the National Personnel Records Center in accordance with GRS 1–23.b(2)(a).

c. Electronic records: Deleted after the expiration of the retention period authorized for the disposable hard copy file or when no longer needed, whichever is later in accordance with GRS 20–3.a.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Human Resources Policy and Programs, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For Regional personnel, at Regional Offices I–IV listed in Addendum I, part 2.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act/Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with NRC's Privacy Act regulations regarding verification of identity contained in 10 CFR part 9.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedure" and comply with NRC's Privacy Act regulations regarding verification of identity and record access procedures contained in 10 CFR part 9.

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedure" and comply with NRC's Privacy Act regulations regarding verification of identity and contesting record procedures contained in 10 CFR part 9.

RECORD SOURCE CATEGORIES:

Part A: Individual to whom record pertains and employee's supervisors.

Part B: Individual to whom record pertains and employee's supervisors and any documents and sources used to develop critical elements and performance standards for that Senior Executive Service position.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(1) and (5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

Dated at Rockville, MD, this 24th day of October, 1997.

For the Nuclear Regulatory Commission.

A. J. Galante,

Chief Information Officer.

[FR Doc. 97–28755 Filed 10–29–97; 8:45 am]

BILLING CODE 7590–01–P

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:* Public Service Pension Questionnaires.

(2) *Form(s) submitted:* G–208, G–212.

(3) *OMB Number:* 3220–0136.

(4) *Expiration date of current OMB clearance:* 12/31/97.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 7,700.

(8) *Total annual responses:* 7,700.

(9) *Total annual reporting hours:* 1,200.

(10) *Collection description:* A spouse or survivor annuity under the Railroad Retirement Act may be subjected to a reduction for a public service pension. The questionnaires obtain information needed to determine if the reduction applies and the amount of such reduction.

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. 97–28707 Filed 10–29–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Great Northern Finance Corporation; Order of Suspension of Trading

[File No. 500–1]

October 27, 1997.

It appears to the Securities and Exchange Commission that there is a lack of adequate and accurate current information concerning the securities of Great Northern Finance Corporation ("GNFL"), of Denver, Colorado. Questions have been raised about publicly-disseminated information concerning, among other things: (1) arrangements, understandings or agreements to artificially control the market for GNFL's securities; (2) the ownership of GNFL's securities; (3) the status of a proposed acquisition of Lazer-Tek Designs, Inc. by GNFL; (4) the business prospects of Lazer-Tek; and (5) the business prospects of GNFL.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:00 a.m. EST, October 27, 1997 through 11:59 p.m. EST, on November 7, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28836 Filed 10–27–97; 4:36 pm]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities: Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with P.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the current OMB approval(s) or are proposed new collection(s):

1. *Request to be Selected as Payee—0960–0014.* The information collected on Form SSA–11–BK is used to determine the proper payee for a Social Security beneficiary, and it is designed to aid in the investigation of a payee applicant. The form will establish the applicant's relationship to the beneficiary, the justification, the concern for the beneficiary and the manner in which the benefits will be used. The respondents are applicants for selection as representative payee for Old-Age, Survivors and Disability Insurance (OASDI), Supplemental Security Income (SSI) and Black Lung benefits.

Number of Respondents: 1,709,657.

Frequency of Response: 1.

Average Burden Per Response: 10.5 minutes.

Estimated Annual Burden: 229,190 hours.

2. *Application for Benefits Under the Federal Mine Safety and Health Act of 1977, as Amended; (Widow's Claim, Child's Claim and Dependent's Claim)—0960–0118.* Sections 402(g) and 412(a) of the Federal Mine Safety and Health Act provide that those widows, surviving children, and dependent parents, brothers or sisters who are not currently receiving benefits on the deceased miner's account must file the appropriate application within 6 months of the deceased miner's death, using Forms SSA–47, 48 and 49. This information is used to determine eligibility for benefits.

Number of Respondents: 1,800.

Frequency of Response: 1.

Average Burden Per Response: 11 minutes.

Estimated Annual Burden: 330 hours.

3. *Work History Report—0960–0552.* Form SSA–3369–BK is used by the State Disability Determination Services (DDSs) to determine disability and to record information about the claimant's work history during the past 15 years. The respondents are claimants who live in Virginia and are applying for OASDI and SSI benefits.

Number of Respondents: 32,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 16,000 hours.

4. *Disability Report-Child—0960–0504.* Form SSA–3820–BK is used by the State DDSs to record claimants' allegations and sources of evidence in determining eligibility for children filing for SSI disability benefits. The respondents are SSI claimants who live in Virginia and are applying for disabled child's benefits.

Number of Respondents: 10,900.

Frequency of Response: 1.

Average Burden Per Response: 40 minutes.

Estimated Annual Burden: 7,267 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The information collection(s) listed below have been submitted to OMB:

1. *Disability Report—0960–0573.* The information collected on Form SSA–3368–F6 is needed for the determination of disability by the State DDSs. The information will be used to develop medical evidence and to assess the alleged disability. The respondents are applicants for disability benefits.

Number of Respondents: 2,438,496.

Frequency of Response: 1.

Average Burden Per Response: 45 minutes.

Estimated annual Burden: 1,828,872 hours.

2. *Work History Report–0960–0572.* The information collected on Form SSA–3369–F6 is needed for the determination of disability by the State DDSs. The information will be used to document an individual's past work history. The respondents are applicants for OASDI and SSI benefits.

Number of Respondents: 1,000,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated annual Burden: 500,000 hours.

3. *Medical History and Disability Report, Disabled Child—0960–0574.* The information collected on Form SSA–3820–F4 is needed for the determination of disability by the State DDSs to obtain various types of information about a child's condition, his/her treating sources and/or other medical sources of evidence. The respondents are SSI claimants who are applying for disabled child's benefits.

Number of Respondents: 523,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated annual Burden: 174,333 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB) Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20503

(SSA) Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: October 24, 1997.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 97–28831 Filed 10–29–97; 8:45 am]

BILLING CODE 4190–29–M

SOCIAL SECURITY ADMINISTRATION

Finding Regarding the Social Insurance System of The Czech Republic

AGENCY: Social Security Administration.

ACTION: Notice of Finding Regarding the Social Insurance System of The Czech Republic.

FINDING: Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months, and prior to the first month thereafter for all of which, the individual has been in the United States. This prohibition does not apply to such an individual where one of the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2)–(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(t)(11), the prohibition against payment shall not apply to any individual who is a citizen of a country which the Commissioner of Social Security finds has in effect a social insurance system which is of general application in such country and which:

(a) pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Commissioner of Social Security has delegated the authority to make such a finding to the Associate Commissioner for International Policy. Under that authority, the Associate Commissioner for International Policy has approved a finding that the Czech Republic, as of January 1, 1993, has a social insurance system of general application which:

(a) pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) permits United States citizens who are not citizens of the Czech Republic and who qualify for the relevant benefits to receive those benefits, or their actuarial equivalent, while outside of the Czech Republic, regardless of the duration of the absence of these individuals from the Czech Republic.

Accordingly, it is hereby determined and found that the Czech Republic has in effect, as of January 1, 1993, a social insurance system which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

This is our first finding under section 202(t) of the Social Security Act for the Czech Republic. Before January 1993, the United States did not recognize the Czech Republic as an independent nation. Czechoslovakia divided into two separate states, the Czech Republic and the Slovak Republic, on January 1, 1993. At that time, and until January 1996, the Czech Republic continued to use the old Czechoslovak social insurance system which was determined to meet the provisions of Section 202(t)(2) of the Social Security Act on July 1, 1968. The Czech Republic also considered itself bound by the Diplomatic Notes on reciprocity of payments that were exchanged between the United States and Czechoslovakia in 1968 and the addendum in 1969.

The new social insurance law, the Pension Insurance Act, entered into force in the Czech Republic on January 1, 1996. Prior to that date, Czech citizens met an exception under the provisions of section 202(t)(2) based on the old Czechoslovak law that was still in effect.

FOR FURTHER INFORMATION CONTACT: Donna Powers, Room 1104, West High Rise Building, P.O. Box 17741, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3568.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

Dated: October 24, 1997.

James A. Kissko,

Associate Commissioner for International Policy.

[FR Doc. 97–28770 Filed 10–29–97; 8:45 am]

BILLING CODE 4190–29–P

SOCIAL SECURITY ADMINISTRATION

Senior Executive Service; Performance Review Board Membership

AGENCY: Social Security Administration.

ACTION: Notice of Senior Executive Service Performance Review Board Membership.

Title 5, U.S. Code, Section 4314(c)(4) of the Civil Service Reform Act of 1978, Pub. L. 95–454, requires that the appointment of Performance Review Board members be published in the **Federal Register.**

The following persons will serve on the Performance Review Board which oversees the evaluation of performance appraisals of Senior Executive Service members of the Social Security Administration:

Kathleen M. Adams
Eli N. Donkar
Glennalee K. Donnelly
Armando A. Gonzalez
Charlotte A. J. Hardnett
W. Burnell Hurt
Carolyn J. Shearin-Jones
Gordon M. Sherman
Barbara S. Sledge
Miguel A. Torrado

Dated: October 21, 1997.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 97–28769 Filed 10–29–97; 8:45 am]

BILLING CODE 4190–29–P

SOCIAL SECURITY ADMINISTRATION

Office of the Commissioner; 1998 Cost-of-Living Increase and Other Determinations

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: The Commissioner has determined—

(1) A 2.1 percent cost-of-living increase in Social Security benefits under title II of the Social Security Act (the Act), effective for December 1997;

(2) An increase in the Federal Supplemental Security Income (SSI) monthly benefit amounts under title XVI of the Act for 1998 to $494 for an eligible individual, $741 for an eligible individual with an eligible spouse, and $247 for an essential person;

(3) The national average wage index for 1996 to be $25,913.90;

(4) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base to be $68,400 for remuneration paid in 1998 and self-employment income earned in taxable years beginning in 1998;

(5) For beneficiaries under age 65, the monthly exempt amount under the Social Security retirement earnings test for taxable years ending in calendar year 1998 to be $760;

(6) The dollar amounts ("bend points") used in the benefit formula for workers who become eligible for benefits in 1998 and in the formula for computing maximum family benefits;

(7) The amount of earnings a person must have to be credited with a quarter of coverage in 1998 to be $700;

(8) The "old-law" contribution and benefit base to be $50,700 for 1998;

(9) The monthly amount of substantial gainful activity applicable to statutorily blind individuals in 1998 to be $1,050;

(10) The domestic worker coverage threshold to be $1,100 for 1998; and

(11) The OASDI fund ratio to be 152.9 percent for 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3013. For information on eligibility or claiming benefits, call 1–800–772–1213. A summary of the information in this announcement is available in a recorded message by telephoning (410) 965–3053. Information relating to this announcement is also available on the Internet. The address is http://www.ssa.gov/OACT/COLA/Intro.html.

SUPPLEMENTARY INFORMATION: The Commissioner is required by the Act to publish within 45 days after the close of the third calendar quarter of 1997 the benefit increase percentage and the revised table of "special minimum" benefits (section 215(i)(2)(D)). Also, the Commissioner is required to publish on or before November 1 the national average wage index for 1996 (section 215(a)(1)(D)), the OASDI fund ratio for 1997 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 1998 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 1998 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 1998 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 1998 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 1998 (section 203(a)(2)(C)).

Cost-of-Living Increases

General. The cost-of-living increase is 2.1 percent for benefits under titles II and XVI of the Act.

Under title II, OASDI benefits will increase by 2.1 percent beginning with the December 1997 benefits, which are payable in January 1998. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 2.1 percent effective for payments made for the month of January 1998 but paid on December 31, 1997. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f). The percentage increase effective January 1998 is the same as the title II percentage increase and the annual payment amount is rounded, when not a multiple of $12, to the next lower multiple of $12.

Automatic Benefit Increase Computation. Under section 215(i) of the Act, the third calendar quarter of 1997 is a cost-of-living computation quarter for all the purposes of the Act. The Commissioner is, therefore, required to increase benefits, effective with December 1997, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 1997, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 1996 through the third quarter of 1997.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. The arithmetic mean is rounded, if necessary, to the nearest 0.1. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 1996, is: for July 1996, 154.3; for August 1996, 154.5; and for September 1996, 155.1. The arithmetic mean for this calendar quarter is 154.6. The corresponding Consumer Price Index for each month in the quarter ending September 30, 1997, is: for July 1997, 157.5; for August 1997, 157.8; and for September 1997, 158.3. The arithmetic mean for this calendar quarter is 157.9. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1997, exceeds that for the calendar quarter ending September 30, 1996 by 2.1 percent, a cost-of-living benefit increase of 2.1 percent is effective for benefits under title II of the Act beginning December 1997.

Title II Benefit Amounts. In accordance with section 215(i) of the Act, in the case of insured workers and family members for whom eligibility for benefits (i.e., the worker's attainment of age 62, or disability or death before age 62) occurred before 1998, benefits will increase by 2.1 percent beginning with benefits for December 1997 which are payable in January 1998. In the case of

first eligibility after 1997, the 2.1 percent increase will not apply.

For eligibility after 1978, benefits are generally determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, benefits are determined by means of a benefit table. A copy of this table may be obtained by writing to: Social Security Administration, Office of Public Inquiries, 4100 Annex, Baltimore, MD 21235. The table is also available on the Internet at address http://www.ssa.gov/OACT/ProgData/tableForm.html.

Section 215(i)(2)(D) of the Act requires that, when the Commissioner determines an automatic increase in Social Security benefits, the Commissioner shall publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). These benefits are referred to as "special minimum" benefits and are payable to certain individuals with long periods of relatively low earnings. To qualify for such benefits, an individual must have at least 11 "years of coverage." To earn a year of coverage for purposes of the special minimum, a person must earn at least a certain proportion (25 percent for years before 1991, and 15 percent for years after 1990) of the "old-law" contribution and benefit base. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 2.1 percent benefit increase.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS PAYABLE FOR DEC. 1997

No. of years of coverage	Primary insurance amount	Maximum family benefit
11	$27.60	$41.70
12	55.40	83.80
13	83.70	125.80
14	111.40	167.70
15	139.40	209.30
16	167.50	251.80
17	195.50	293.90
18	223.50	335.80
19	251.50	377.80
20	279.40	419.70
21	307.70	462.00
22	335.50	503.90
23	363.70	546.50
24	391.80	588.30
25	419.70	629.90
26	448.00	672.70

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS PAYABLE FOR DEC. 1997—Continued

No. of years of coverage	Primary insurance amount	Maximum family benefit
27	475.90	714.50
28	503.80	756.30
29	531.70	798.50
30	559.80	840.20

Section 227 of the Act provides flat-rate benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his or her spouse or surviving spouse. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The current monthly benefit amount of $199.00 for an individual under sections 227 and 228 of the Act is increased by 2.1 percent to obtain the new amount of $203.10. The current monthly benefit amount of $99.50 for a spouse under section 227 is increased by 2.1 percent to $101.50.

Title XVI Benefit Amounts. In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled are increased by 2.1 percent effective January 1998. Therefore, the yearly Federal SSI benefit amounts of $5,808 for an eligible individual, $8,712 for an eligible individual with an eligible spouse, and $2,904 for an essential person, which became effective January 1997, are increased, effective January 1998, to $5,928, $8,892, and $2,964, respectively, after rounding. The corresponding monthly amounts for 1998 are determined by dividing the yearly amounts by 12, giving $494, $741, and $247, respectively. The monthly amount is reduced by subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

Fee for Services Performed as a Representative Payee. Sections 205(j)(4)(A)(i) and 1631(a)(2)(D)(i) of the Act permit a qualified organization to collect from an individual a monthly fee for expenses incurred in providing services performed as such individual's representative payee. Currently the fee is limited to the lesser of (1) 10 percent of the monthly benefit involved, or (2) $26 per month ($51 per month in any case in which the individual is entitled to disability benefits and the Commissioner has determined that payment to the representative payee would serve the interest of the individual because the individual has an alcoholism or drug addiction condition and is incapable of managing such benefits). The dollar fee limits are subject to increase by the automatic cost-of-living increase, with the resulting amounts rounded to the nearest whole dollar amount. The current amounts are thus increased by 2.1 percent to $27 and $52 for 1998.

National Average Wage Index for 1996

General. Under various provisions of the Act, several amounts are scheduled to increase automatically for 1998 based on the annual increase in the national average wage index. The amounts are (1) the OASDI contribution and benefit base, (2) the retirement test exempt amount for beneficiaries under age 65, (3) the dollar amounts, or "bend points," in the primary insurance amount and maximum family benefit formulas, (4) the amount of earnings required for a worker to be credited with a quarter of coverage, (5) the "old law" contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments), and (6) the substantial gainful activity amount applicable to statutorily blind individuals. Also, section 3121(x) of the Internal Revenue Code requires that the domestic employee coverage threshold be based on changes in the national average wage index.

Computation. The determination of the national average wage index for calendar year 1996 is based on the 1995 national average wage index of $24,705.66 announced in the **Federal Register** on October 25, 1996 (61 FR 55346), along with the percentage increase in average wages from 1995 to 1996 measured by annual wage data tabulated by the Social Security Administration (SSA). The wage data tabulated by SSA include contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated directly from these data were $23,700.11 and $24,859.17 for 1995 and 1996, respectively. To determine the national average wage index for 1996 at a level that is consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), the 1995 national average wage index of $24,705.66 is multiplied by the percentage increase in average wages from 1995 to 1996 (based on SSA-tabulated wage data) as follows (with the result rounded to the nearest cent):

Amount. The national average wage index for 1996 is $24,705.66 times $24,859.17 divided by $23,700.11,

which equals $25,913.90. Therefore, the national average wage index for calendar year 1996 is determined to be $25,913.90.

OASDI Contribution and Benefit Base

General. The OASDI contribution and benefit base is $68,400 for remuneration paid in 1998 and self-employment income earned in taxable years beginning in 1998.

The OASDI contribution and benefit base serves two purposes:

(a) It is the maximum annual amount of earnings on which OASDI taxes are paid. The OASDI tax rate for remuneration paid in 1998 is set by statute at 6.2 percent for employees and employers, each. The OASDI tax rate for self-employment income earned in taxable years beginning in 1998 is 12.4 percent. (The Hospital Insurance tax is due on remuneration, without limitation, paid in 1998, at the rate of 1.45 percent for employees and employers, each, and on self-employment income earned in taxable years beginning in 1998, at the rate of 2.9 percent.)

(b) It is the maximum annual amount used in determining a person's OASDI benefits.

Computation. Section 230(b) of the Act provides the formula used to determine the OASDI contribution and benefit base. Under the formula, the base for 1998 shall be equal to the larger of (1) the 1994 base of $60,600 multiplied by the ratio of the national average wage index for 1996 to that for 1992, or (2) the current base ($65,400). If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount. The ratio of the national average wage index for 1996, $25,913.90 as determined above, compared to that for 1992, $22,935.42, is 1.1298638. Multiplying the 1994 OASDI contribution and benefit base amount of $60,600 by the ratio of 1.1298638 produces the amount of $68,469.75 which must then be rounded to $68,400. Because $68,400 exceeds the current base amount of $65,400, the OASDI contribution and benefit base is determined to be $68,400 for 1998.

Retirement Earnings Test Exempt Amounts

General. Social Security benefits are withheld when a beneficiary under age 70 has earnings in excess of the retirement earnings test exempt amount. Since 1978, higher exempt amounts have applied to beneficiaries aged 65 through 69 compared to those under age 65. Formulas for determining the monthly exempt amounts are provided in section 203(f)(8)(B) of the Act, as amended by section 102 of the "Senior Citizens" Right to Work Act of 1996," title I of Pub. L. 104–121. This amendment set the annual exempt amount for beneficiaries aged 65 through 69 to $12,500 for 1996, $13,500 for 1997, $14,500 for 1998, $15,500 for 1999, $17,000 for 2000, $25,000 for 2001, and $30,000 for 2002. The corresponding monthly exempt amounts are exactly one-twelfth of the annual amounts. After 2002, the monthly exempt amount for this group of beneficiaries will increase under the applicable formula.

For beneficiaries aged 65 through 69, $1 in benefits is withheld for every $3 of earnings in excess of the annual exempt amount. For beneficiaries under age 65, $1 in benefits is withheld for every $2 of earnings in excess of the annual exempt amount.

Computation. Under the formula applicable to beneficiaries under age 65, the monthly exempt amount for 1998 shall be the larger of (1) the 1994 monthly exempt amount multiplied by the ratio of the national average wage index for 1996 to that for 1992, or (2) the 1997 monthly exempt amount ($720). If the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Exempt Amount for Beneficiaries Under Age 65. The ratio of the national average wage index for 1996, $25,913.90, compared to that for 1992, $22,935.42, is 1.1298638. Multiplying the 1994 retirement earnings test monthly exempt amount of $670 by the ratio 1.1298638 produces the amount of $757.01. This must then be rounded to $760. Because $760 is larger than the corresponding current exempt amount of $720, the retirement earnings test monthly exempt amount for beneficiaries under age 65 is thus determined to be $760 for 1998. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $9,120.

Computing Benefits After 1978

General. The Social Security Amendments of 1977 provided a method for computing benefits which generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's "average indexed monthly earnings" to compute the primary insurance amount. The computation formula is adjusted automatically each year to reflect changes in general wage levels, as measured by the national average wage index.

A worker's earnings are adjusted, or "indexed," to reflect the change in general wage levels that occurred during the worker's years of employment. Such indexation ensures that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime. A certain number of years of earnings are needed to compute the average indexed monthly earnings. After the number of years is determined, those years with the highest indexed earnings are chosen, the indexed earnings are summed, and the total amount is divided by the total number of months in those years. The resulting average amount is then rounded down to the next lower dollar amount. The result is the average indexed monthly earnings.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled before age 62, or dying before attaining age 62, in 1998, the national average wage index for 1996, $25,913.90, is divided by the national average wage index for each year prior to 1996 in which the worker had earnings. The actual wages and self-employment income, as defined in section 211(b) of the Act and credited for each year, is multiplied by the corresponding ratio to obtain the worker's indexed earnings for each year before 1996. Any earnings in 1996 or later are considered at face value, without indexing. The average indexed monthly earnings is then computed and used to determine the worker's primary insurance amount for 1998.

Computing the Primary Insurance Amount. The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The dollar amounts in the formula which govern the portions of the average indexed monthly earnings are frequently referred to as the "bend points" of the formula. Thus, the bend points for 1979 were $180 and $1,085.

The bend points for 1998 are obtained by multiplying the corresponding 1979 bend-point amounts by the ratio between the national average wage index for 1996, $25,913.90, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1998, the ratio is 2.6498348. Multiplying the 1979 amounts of $180 and $1,085 by 2.6498348 produces the amounts of $476.97 and $2,875.07. These must then be rounded to $477 and $2,875. Accordingly, the portions of the average indexed monthly earnings to be used in 1998 are determined to be the first $477,

the amount between $477 and $2,875, and the amount over $2,875.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1998, or who die in 1998 before becoming eligible for benefits, their primary insurance amount will be the sum of:

(a) 90 percent of the first $477 of their average indexed monthly earnings, plus

(b) 32 percent of their average indexed monthly earnings over $477 and through $2,875, plus

(c) 15 percent of their average indexed monthly earnings over $2,875.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the rounding adjustment described above are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

General. The 1977 amendments continued the long established policy of limiting the total monthly benefits that a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a formula for computing the maximum benefits payable to the family of a disabled worker. This formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum. The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The dollar amounts in the formula which govern the portions of the primary insurance amount are frequently referred to as the "bend points" of the family-maximum formula. Thus, the bend points for 1979 were $230, $332, and $433.

The bend points for 1998 are obtained by multiplying the corresponding 1979 bend-point amounts by the ratio between the national average wage index for 1996, $25,913.90, and the average for 1977, $9,779.44. This amount is then rounded to the nearest dollar. For 1998, the ratio is 2.6498348. Multiplying the amounts of $230, $332, and $433 by 2.6498348 produces the amounts of $609.46, $879.75, and $1,147.38. These amounts are then rounded to $609, $880, and $1,147. Accordingly, the portions of the primary insurance amounts to be used in 1998 are determined to be the first $609, the amount between $609 and $880, the amount between $880 and $1,147, and the amount over $1,147.

Consequently, for the family of a worker who becomes age 62 or dies in 1998 before age 62, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $609 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $609 through $880, plus

(c) 134 percent of the worker's primary insurance amount over $880 through $1,147, plus

(d) 175 percent of the worker's primary insurance amount over $1,147.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the rounding adjustment described above are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

Quarter of Coverage Amount

General. The 1998 amount of earnings required for a quarter of coverage is $700. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or an individual was credited with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to a maximum of 4 quarters of coverage for the year).

Computation. Under the prescribed formula, the quarter of coverage amount for 1998 shall be equal to the larger of (1) the 1978 amount of $250 multiplied by the ratio of the national average wage index for 1996 to that for 1976, or (2) the current amount of $670. Section 213(d) further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Quarter of Coverage Amount. The ratio of the national average wage index for 1996, $25,913.90, compared to that for 1976, $9,226.48, is 2.8086443. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 2.8086443 produces the amount of $702.16, which must then be rounded to $700. Because $700 exceeds the current amount of $670, the quarter of coverage amount is determined to be $700 for 1998.

"Old-Law" Contribution and Benefit Base

General. The 1998 "old-law" contribution and benefit base is $50,700. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Act as it read prior to the 1977 amendments.

The "old-law" contribution and benefit base is used by:

(a) the Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(b) the Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Social Security Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to determine a year of coverage (acquired whenever earnings equal or exceed 25 percent of the "old-law" base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation. The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments, but with the revised indexing formula introduced by section 321(g) of the "Social Security Independence and Program Improvements Act of 1994." Under the

formula, the "old-law" contribution and benefit base shall be the larger of (1) the 1994 "old-law" base ($45,000) multiplied by the ratio of the national average wage index for 1996 to that for 1992, or (2) the current "old-law" base ($48,600). If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount. The ratio of the national average wage index for 1996, $25,913.90, compared to that for 1992, $22,935.42, is 1.1298638. Multiplying the 1994 "old-law" contribution and benefit base amount of $45,000 by the ratio of 1.1298638 produces the amount of $50,843.87 which must then be rounded to $50,700. Because $50,700 exceeds the current amount of $48,600, the "old-law" contribution and benefit base is determined to be $50,700 for 1998.

Substantial Gainful Activity Amount for Blind Individuals

General. A finding of disability under titles II and XVI of the Act requires that a person be unable to engage in substantial gainful activity (SGA). Under current regulations, a person who is not statutorily blind and who is earning more than $500 a month (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The Social Security Amendments of 1977 established a higher SGA amount for statutorily blind individuals by setting their monthly SGA amount to the monthly exempt amount for persons aged 65 through 69 under the retirement earnings test provisions of the Act. Section 102 of Pub. L. 104–121 increased the earnings test exempt amount for persons aged 65 through 69 to specific levels for 1996–2002. Section 102 further provided that the SGA amount for blind individuals be the same as it would have been if section 102 had not been enacted.

Computation. Under the formula in section 203(f)(8)(B) in effect prior to the enactment of Pub. L. 104–121, the monthly SGA amount for statutorily blind individuals for 1998 shall be the larger of (1) such amount for 1994 multiplied by the ratio of the national average wage index for 1996 to that for 1992, or (2) such amount for 1997. Section 203(f)(8)(B) further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

SGA Amount for Statutorily Blind Individuals. The ratio of the national average wage index for 1996, $25,913.90, compared to that for 1992, $22,935.42, is 1.1298638. Multiplying the 1994 monthly SGA amount for statutorily blind individuals of $930 by the ratio of 1.1298638 produces the amount of $1,050.77. This must then be rounded to $1,050. Because $1,050 is larger than the current amount of $1,000, the monthly SGA amount for statutorily blind individuals is determined to be $1,050 for 1998.

Domestic Employee Coverage Threshold

General. Section 2 of the "Social Security Domestic Employment Reform Act of 1994" (Pub. L. 103–387) increased the threshold for coverage of a domestic employee's wages paid per employer from $50 per calendar quarter to $1,000 in calendar year 1994. The statute holds the coverage threshold at the $1,000 level for 1995 and then increases the threshold in $100 increments for years after 1995. The formula for increasing the threshold is provided in section 3121(x) of the Internal Revenue Code.

Computation. Under the formula, the domestic employee coverage threshold amount for 1998 shall be equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 1996 to that for 1993. If the amount so determined is not a multiple of $100, it shall be rounded to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount. The ratio of the national average wage index for 1996, $25,913.90, compared to that for 1993, $23,132.67, is 1.1202295. Multiplying the 1995 domestic employee coverage threshold amount of $1,000 by the ratio of 1.1202295 produces the amount of $1,120.23, which must then be rounded to $1,100. Accordingly, the domestic employee coverage threshold amount is determined to be $1,100 for 1998.

OASDI Fund Ratio

General. Section 215(i) of the Act provides for automatic cost-of-living increases in OASDI benefit amounts. This section also includes a "stabilizer" provision that can limit the automatic OASDI benefit increase under certain circumstances. If the combined assets of the OASI and DI Trust Funds, as a percentage of annual expenditures, are below a specified threshold, the automatic benefit increase is equal to the lesser of (1) the increase in the national average wage index or (2) the increase in prices. The threshold specified for the OASDI fund ratio is 20.0 percent for benefit increases for December of 1989 and later. The law also provides for subsequent "catch-up" benefit increases for beneficiaries whose previous benefit increases were affected by this provision. "Catch-up" benefit increases can occur only when trust fund assets exceed 32.0 percent of annual expenditures.

Computation. Section 215(i) specifies the computation and application of the OASDI fund ratio. The OASDI fund ratio for 1997 is the ratio of (1) the combined assets of the OASI and DI Trust Funds at the beginning of 1997 to (2) the estimated expenditures of the OASI and DI Trust Funds during 1997, excluding transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

Ratio. The combined assets of the OASI and DI Trust Funds at the beginning of 1997 equaled $566,950 million, and the expenditures are estimated to be $370,842 million. Thus, the OASDI fund ratio for 1997 is 152.9 percent, which exceeds the applicable threshold of 20.0 percent. Therefore, the stabilizer provision does not affect the benefit increase for December 1997. Although the OASDI fund ratio exceeds the 32.0-percent threshold for potential "catch-up" benefit increases, no past benefit increase has been reduced under the stabilizer provision. Thus, no "catch-up" benefit increase is required.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.003 Social Security-Special Benefits for Persons Aged 72 and Over; 96.004 Social Security-Survivors Insurance; 96.006 Supplemental Security Income)

Dated: October 22, 1997.

Kenneth S. Apfel,

Commissioner, Social Security Administration.

[FR Doc. 97–28496 Filed 10–29–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–54]

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 November 21, 1997.

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. 24041, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMSTS@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, D.C. 20591; telephone (202) 267–3132.

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 October 23, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No: 24041.

Petitioner: Bulter Aircraft Co.

Sections of the FAR Affected: 14 CFR 91.529(a)(1).

Description of Relief Sought/ Disposition: To permit the petitioner to operate McDonnell Douglas DC–6 and DC–7 aircraft without a flight engineer during flightcrew training, ferry operations, and test flights that are conducted to prepare for firefighting operations conducted under 14 CFR part 137.

Grant, October 9, 1997, Exemption No. 2989I.

[FR Doc. 97–28752 Filed 10–29–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 2983]

Notice of Request for Reinstatement of Expired Information Collection

AGENCY: Federal Highway Administration (FHWA), USDOT.

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 reinstate the information collection entitled Highway Safety and Improvement Program and Priorities.

DATES: Comments must be submitted on or before December 29, 1997.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading 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 from 10:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

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 OMB clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Epstein, Office of Highway Safety, (202) 366–2157, 400 7th Street, SW, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Highway Safety and Improvement Program and Priorities.

OMB No: 2125–0025.

Background: Each year all States and Territories are required to report to the Secretary of Transportation on the progress being made in implementing the Highway Safety Improvement Programs (Rail-Highway Crossings and Hazard Elimination) and the effectiveness of these programs. The Secretary is required to report annually to the Congress on the progress of the safety programs based upon the information reported by the States. The FHWA receives the program information from the States. Numerical data are processed and stored in the computerized Highway Safety Evaluation System. A report is then prepared for Congress providing the required information on the effectiveness of highway safety improvement projects. Congress uses the contents of this report when determining the level of funding for the Highway Safety Improvement Programs and when modifying these programs.

The information collected by the States in the survey of all public roads includes motor vehicle accident data, traffic volume data, and highway inventory data. This information is used by the States to identify hazards and to determine what safety improvements would be cost-effective when mitigating those hazards. Without this process fewer lives would be saved and fewer injuries averted by the Highway Safety Improvement Programs administered by the FHWA.

Respondents: The overall annual reporting burden is shared by the 50 States and the District of Columbia.

Estimated Total Annual Burden: The annual reporting burden is estimated to be 11,220 hours.

Frequency: The respondents are required to report on an annual basis.

Authority: Title 23, U.S. Code, Section 130; 23 U.S.C. 152, 23 CFR 924.

Issued on: October 17, 1997.

Diana Zeidel,

Deputy Associate Administrator for Administration.

[FR Doc. 97–28764 Filed 10–29–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 97–2934]

Notice of Request for Renewal of an Existing 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 renew the information collection identified below under supplementary information.

DATES: Comments must be submitted on or before December 29, 1997.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading 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 10:00 a.m. and 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

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 OMB renewal of this information collection.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Solury, Office of Environment and Planning, 202–366–5003, 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:

Title: Planning and Research Program Administration

OMB number: 2125–0039.

Background: Under the provisions of section 307(c) of title 23, United States Code, two percent of certain categories of Federal-aid highway funds apportioned to the States are set-a-side for use only for State planning and research (SPR funds). At least 25% of the SPR funds apportioned annually must be used for the research, development, and technology transfer activities. In accordance with government-wide grant management procedures, a grant application must be submitted for these funds. In addition, recipients must submit periodic progress and financial reports. In lieu of Standard Form 424, Application for Federal Assistance, the FHWA uses a "work program" that includes a scope of work and budget for activities to be undertaken with FHWA planning and research funds during the next one-or two-year period as the grant application. The information contained in the work program includes task descriptions, assignments of responsibility for conducting the work effort, and estimated costs for the tasks. This information is necessary to determine how FHWA planning and research funds will be utilized by the State highway agencies and if the proposed work is eligible for Federal participation.

The content and frequency of submission of progress and financial reports specified in 23 CFR part 420 are as specified in OMB Circular A–102 and the companion common grant management regulations.

Respondents: State highway agencies.

Estimated Annual Burden on Respondents: 400 hours per respondent.

Estimated Total Annual Burden: 28,080 hours.

Auuthority: 23 U.S.C. 307(c); 23 CFR 420, subpart A.

Issued on: October 17, 1997.

Diana Zeidel,

Deputy Associate Administrator for Administration

[FR Doc. 97–28767 Filed 10–29–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Department of the Army

Corps of Engineers

Environmental Impact Statement for Antelope Valley Improvements In Lincoln, Lancaster County, Nebraska

AGENCIES: Federal Highway Administration (FHWA), DOT; U.S. Army Corps of Engineers (COE).

ACTION: Notice of intent to Prepare an Environmental Impact Statement.

SUMMARY: The FHWA; COE; the City of Lincoln, Nebraska; the Lower Platte South Natural Resources District (LPSNRD); and the University of Nebraska-Lincoln (UNL) are issuing this notice to advise the public and all other interested parties that are in accordance with the National Environmental Policy Act (NEPA), an Environmental Impact Statement (EIS) will be prepared for proposed stormwater management, transportation, and community revitalization improvements in the Antelope Valley study area of Lincoln, Nebraska.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Kosola, Realty Officer, FHWA, Room 220, 100 Centennial Mall North, Lincoln, NE 68508, Telephone: (402) 437–5521. Ms. Patsy Freeman, EIS Manager, COE, 215 N. 17th Street, Omaha, NE 68102–4976, Telephone: (402) 221–3803. Mr. Roger A. Figard, City Engineer, City of Lincoln, 555 So. 10th Street, Lincoln, NE 68508–3994, Telephone: (402) 441–7567.

SUPPLEMENTARY INFORMATION:

Description of Study Area and Needs

The Antelope Valley Major Investment Study has been exploring improvements for the core area of Lincoln to seek out a community vision on the best courses of action. The study has been concentrating on the three major issues of stormwater management, transportation, and community revitalization. The purposes and needs identified by the community and study participants during the last two years include: stormwater management, land use patterns, traffic operations, youth recreation, trail continuity, safety, neighborhood cohesiveness, and downtown vitality.

Description of Proposed Improvements

Improvements proposed for the Antelope Valley study area include stormwater conveyance, roadway improvements, and elimination of four at-grade railroad/roadway crossings, and community revitalization initiatives. The stormwater management improvements include a new channel and channel improvements for stormwater conveyance from "N" Street to Salt Creek in Lincoln, Nebraska. Transportation improvements include a new north-south road in the 19th Street corridor from "K" Street along the east side of the University of Nebraska-Lincoln City Campus, continuing north over the Burlington Northern Santa Fe (BNSF) mainline railroad and connecting to 14th Street near Military Avenue. The new north-south road intersects on structure with a new east-west road connecting Avery Avenue to a new roadway on the north side on the BNSF mainline railroad and continuing north to Superior Street where it aligns with the proposed 33rd Street north of Superior Street. Community revitalization initiatives include "wrap around" centers (places to encourage combining several community-oriented services) and new development opportunities. The proposed

improvements also include a bike path "loop" which utilizes, among other corridors, the new stormwater conveyance channel, and a new community park. Taking no action is also under consideration.

Scoping Meetings

Public scoping meetings include a two-day Town Hall meeting and three public information meetings. The Town Hall Meeting will be held on Friday, November 7, 1997 from 5:30 to 8:30 p.m. and Saturday, November 8, 1997 from 8:30 a.m. to 1 p.m. at Lincoln High School, 2229 "J" Street, Lincoln, NE 68510. This two day event includes a presentation of planning and analysis and screening conducted to date, questions and answers, small group sessions, and a tour of the study area. In addition, three public scoping meetings will be held in greater Lincoln as follows:

Lincoln East High School, 1000 South 70th Street, Lincoln, NE 68510, Tuesday, November 18, 1997 at 7 p.m.

Southeast High School, 2930 South 37th Street, Lincoln, NE 68506, Wednesday, November 19, 1997 at 7 p.m.

Lincoln Northeast High School, 2635 North 63rd Street, Lincoln, NE 68507, Thursday, November 20, 1997 at 7 p.m.

Comment Due Date

To ensure that the full range of issues related to the proposed actions are addressed and all significant issues identified, comments and suggestions are invited from all interested individuals, organizations, and federal, state and local agencies. Comments and questions concerning this proposed action and the EIS should be directed to the COE, FHWA or the City of Lincoln at the address provided.

(Catalog of Federal Domestic Assistance Project Number 20.205 Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program)

Issued on October 23, 1997.

Edward Kosola,

Realty Officer, Nebraska Division, Federal Highway Administration, Lincoln, Nebraska.

[FR Doc. 97–28794 Filed 10–29–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33486]

Adventure Trail d/b/a Sea Lion Railroad—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

Adventure Trail d/b/a Sea Lion Railroad (SLR),[1] a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate[2] a total of approximately 2.7 miles of rail line owned by The Burlington Northern and Santa Fe Railway Company, known as the Ballard Branch, from MP 0.09 (1000 feet from clearpoint to mainline) to terminus at MP 2.7 (near Northwest 40th Street) in the Ballard region in the City of Seattle, King County, WA. The transaction was expected to be consummated on October 15, 1997.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33486, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001 and served on: Charles H. Montange, 426 NW 162d Street, Seattle, WA 98177.

Decided: October 21, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–28785 Filed 10–29–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Public Meeting on Reconciliation

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces that a public meeting regarding reconciliation will be held in Hearing Room A of the Interstate Commerce Commission Building in Washington, DC., commencing at 9:30 a.m. on Wednesday, November 12, 1997. The purpose of this meeting is to (1) discuss transfer pricing issues and (2) analyze a proposal for a menu-approach to reconciliation. Customs has received various comments from members of the importing community that a flexible approach should be developed for reconciliation, under which companies can choose an option which will best suit their business needs.

DATES: The meeting will be held November 12, 1997, from 9:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Interstate Commerce Commission Building, Hearing Room A, 12th Street & Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: To attend the meeting, please contact the Office of Regulations and Rulings at (202) 927–0760.

For additional information on the meeting, please contact either John Durant, Office of Regulations and Rulings, at (202)927–1964 or Shari McCann, Office of Field Operations at (202)927–1106.

SUPPLEMENTARY INFORMATION: On December 8, 1993, the President signed the North American Free Trade Agreement Implementation Act (Pub. L. 103–182). Title VI of the Act contained provisions relating to Customs modernization and is popularly known as the Customs Modernization Act or Mod Act. In Title VI, section 637 amends section 484 of the Tariff Act of 1930 (19 U.S.C. 1484) to create a new subsection (b) entitled "Reconciliation."

Reconciliation allows a party to provide information, other than admissibility information, which is undeterminable at time of entry summary, to Customs at a later date. A reconciliation is treated as an entry for purposes of liquidation, reliquidation and protest.

Customs has published several notices in the **Federal Register** regarding prototype tests of reconciliation. On May 10, 1996, Customs published a notice in the **Federal Register** (61 FR 21534) regarding a reconciliation test covering entries to which antidumping and countervailing duties applied. This test has been completed.

Customs also published two notices regarding plans to test reconciliation for related party importers who had reason to believe upward adjustments may have been made to the price of imported merchandise for tax purposes pursuant

[1] SLR is a nonprofit corporation located in the State of Washington.

[2] SLR states that it intends to apply for a rehabilitation grant from the State of Washington and that it has entered into a contract with an operator, Ballard Terminal Railroad Company, for operational services.

to 26 U.S.C. 482 (60 FR 64470 and 60 FR 46141).

The Account-based Declaration Prototype (62 FR 14731, published 3/27/97), which includes a reconciliation component, is currently being designed under the Automated Commercial Environment.

Customs is also currently designing the ACS Reconciliation Prototype and published a notice in the **Federal Register** (62 FR 51181) on September 30, 1997, announcing plans to conduct a test of this prototype. The testing period of this prototype is scheduled to be implemented in October, 1998.

The importing community has raised concerns to Customs that reconciliation, as is currently envisioned, is overly burdensome in the data required. Customs and the trade are working together in an attempt to provide a series of options for reconciliation, which will provide the controls and information needed by the government and a practical mechanism which accommodates various business situations.

This document announces that a public meeting will be held to discuss issues related to the development of reconciliaton by Customs. At this meeting, Customs and the trade participants will address reconciliation under the current legal structure, and analyze a menu-approach to reconciliation. The goal will be to secure a definition of the various business problems for which reconciliation does not fit, analyze a series of options under which to design reconciliation, and finalize a joint Customs/Industry proposal. Customs will discuss with the trade participants whether any statutory, regulatory or policy changes are required before reconciliation can be best implemented.

The meeting will be held in Hearing Room A of the Interstate Commerce Commission Building in Washington, DC., commencing at 9:30 a.m. on Wednesday, November 12, 1997. Because seating is limited, reservations are required.

The morning session of this meeting will be devoted to a discussion of transfer pricing, including the issues companies face in working under both the Customs and IRS statutes and transfer pricing situations in need of a reconciliation reporting mechanism. The afternoon session will be devoted to government/industry analysis of a menu-approach to reconciliation. The menu-approach is intended to provide a series of options which address various business needs, including the entire range of value issues (e.g., assists, indirect payments, transfer pricing, etc.)

Dated: October 27, 1997.

John Durant.

Director, Mod Act Task Force.

[FR Doc. 97–28779 Filed 10–29–97; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Multi-Regional and Regional Projects for International Visitors

ACTION: Notice; request for proposals.

SUMMARY: The Office of International Visitors (E/V) of the United States Information Agency's (USIA) Bureau of Educational and Cultural Affairs announces an open competition for assistance awards. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop projects for Multi-Regional and Regional Groups of International Visitors nominated by U.S. embassies abroad.

The objective of the International Visitor Program is to increase mutual understanding through communication and collaboration with professional counterparts in the U.S. Participants are current or potential foreign leaders in government, politics, media, education, science, labor relations, and other key fields. They are selected by American embassies abroad and approved by USIA in Washington, DC. Since the program's earliest inception in 1941, more than 120,000 distinguished visitors have participated in the program, and over 155 program alumni have subsequently become heads of state or government in their home countries.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and assistance awards are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/V–98–02.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC, time on the due date indicated for submission of proposals for each project described below. Faxed or e-mailed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted.

TO REQUEST A SOLICITATION PACKAGE, CONTACT:

For Multi-Regional Projects (MRPs): The Office of International Visitors, Group Projects Division (E/VP), Room 255, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547; Tel: (202) 205–3058; Fax: (202) 205–0792.

For Regional Projects (RPs): The Office of International Visitors, Grants Division (E/VG), Room 255, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547, Tel: (202) 205–9596; Fax: (202) 205–7974.

Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: Information about USIA's IV Program is available via Internet at website: http://www.usia.gov. The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps.

TO RECEIVE A SOLICITATION PACKAGE VIA FAX ON DEMAND: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

SUBMISSIONS: Applications must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: *E/V–98–02,* Project Title: Contact Officer: Office of Grants Management, E/XE, Room 326, 301 4th Street SW., Washington, DC 20547. Applicants must also submit the proposal on a 3.5" diskette, formatted for WordPerfect.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to, ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

Title: U.S.-European Security Issues.
Type: European Regional (English-Speaking).
Proposal Due Date: January 13, 1998.
Project Dates: April 13–May 2, 1998.
Contact: Tim Moore.
Telephone: (202) 205–9596 FAX: (202) 205–2983. The security challenges facing the U.S. and Europe today are in many ways more complex than those that existed during the Cold War. With the breakup of the Soviet Union and the fall of the Berlin Wall, regional conflicts have arisen with no effective means of response. No clear consensus has emerged on how countries and multilateral organizations will confront and resolve turmoil in different parts of the world. De-nuclearization agreements, non-proliferation treaties and the role of NATO are being hotly debated.

This three-week project is designed for European government officials, politicians and academics in the security and defense field, and is intended to provide the participants with American perspectives on mutual security issues. The group should meet with a range of key experts and players in the defense and security policymaking process, including government officials, Congressional staff, military personnel, academics and journalists. Topics should include: NATO enlargement; nuclear-proliferation and arms-control policies; regional and ethnic conflicts; the effect of budget reductions on American defense and security policymaking; UN peacekeeping efforts; and international terrorism.

The project will begin in Washington, DC, where the meetings should provide the groundwork for subsequent discussions throughout the country. The national itinerary will include the Norfolk (Va.) Naval Air Station and meetings with the U.S. Atlantic Command, a visit to a military base specializing in rapid deployment, and meetings in local communities with significant resources in the security/defense field. The program should also include a seminar at a major university with a prominent foreign-policy/security department.

Title: Privatization and Economic Reform.
Type: African Regional (French-Speaking).
Propoal Due Date: January 13, 1998.
Projects Dates: April 20–May 8, 1998.
Contact: Mary Jeffers.
Telephone: (202) 205–9596 FAX: (202) 205–7974. Privatization in the U.S. context generally involves increasing the efficiency and lowering the cost of government by contracting certain services to the private sector. This concept differs in important respects from the idea of simply selling off state-owned enterprises, which is often understood to define privatization in many of the African countries now tackling the difficult task of basic structural adjustment. Furthermore, privatization may often be viewed in Africa as imposed from outside (by the IMF, World Bank, or USAID) rather than as most Americans see it, i.e. as a real, necessary condition for economic growth.

Visitors on this project will have the chance to look at multiple aspects of privatization in the U.S., focusing on the central themes of government responsiveness, efficiency, and accountability. The project will review government privatization at the city/county, state, and federal levels, including private-sector contracting to provide basic services such as transportation, garbage collection, or prison management. Other aspects of privatization will include government and NGO efforts to promote private sector development, as well as links between business and academia designed to harness private-sector support for academic research and development.

Finally, meetings with key policymakers in both the U.S. government and multi-lateral institutions will enable the visitors to make comparisons between U.S. privatization practices and the changes and developments taking place in their home countries, and perhaps to establish models for application in the future.

Title: Women in Political and Social Activism.
Type: American Republics Regional (Spanish-Speaking).
Proposal Due Date: February 3, 1998.
Project Dates: May 4–22, 1998.
Contact: Essie Wilkes-Scott.
Telephone: (202) 205–9596 FAX: (202) 205–7974.

In the past few decades the role of women in the United States has expanded more rapidly and dramatically than ever before in our history. From many points on the political and social spectrum, women are more visible, powerful, and vocal. These changes have taken place at every level of American life: In politics and government, in the workplace, in popular culture, in academia, in the home, and in the social service and community leadership roles that women play in rural and urban areas throughout the United States. This project will introduce Latin American women leaders to the United States' women's campaign for equal rights and the societal changes that this campaign has effected. It will examine the social, economic and educational inequities and issues women have championed at the grassroots levels. The program will provide a better understanding of U.S. values and experiences in social and political change by observing the contributions of women to citizen advocacy at the grassroots level; political leadership and the national level; equal employment access and workplace equity; available affordable quality child care; full access to education and training programs; comprehensive health care; and equal access to business opportunities. A variety of meetings and seminars with national, state and local elected and appointed officials and staff, political activists, public and private-sector health and social service program operators, women in the military, employment specialists and business persons, homemakers, educators, and women in voluntary advocacy and aid organizations, will highlight the societal challenges that spur women's increased activism. Political diversity will also be emphasized in this program to ensure that the wide range of perspectives that women bring to their activism are heard.

Title: Independent Judiciary and the Rule of Law.

Type: Near East and South Asian Regional (Arabic-Speaking).

Proposal Due Date: February 3, 1998.

Project Dates: May 11–29, 1998.

Contact: Alice Shifflett.

Telephone: (202) 205–9596 FAX: (202) 205–7974.

By focussing on the independent judiciary and the rule of law, this 21-day project will familiarize Arab jurists with U.S. concepts of judicial independence and the federal, state and municipal court systems, underlining the judiciary's role in preserving and strengthening democratic concepts such as government accountability and individual rights.

It will also illustrate the judiciary's importance for political stability, individual rights and harmony between ethnic and other communities as well as for business confidence and economic growth. The project will provide concrete ideas about improving court management and other administrative aspects of the civil and criminal legal systems of the participants' countries. It would examine potentially useful approaches to legal education and develop linkages between the visitors and U.S. judicial scholars and practitioners.

Title: Immigration, Citizenship and Assimilation in a Democratic Society.

Type: Multi-Regional (English-Speaking).

Proposal Due Date: February 3, 1998.

Project Dates: May 14–June 4, 1998.

Contact: Susan Lockwood.

Telephone: (202) 205–3058 FAX: (202) 205–0792.

E-MAIL Address: slockwoo@usia.gov.

The project will examine the fundamental nature of the immigrant experience to American political culture. U.S. government officials (Congress, State, AID, INS), representatives from non-governmental organizations and experts from academia and think-tanks will discuss U.S. immigration policies—from historical perspectives to current issues. Participants will observe problems which confront long-established citizens and new immigrants alike, as well as examples of assimilation, cultural preservation, and cross-cultural education.

Title: International Crime Issues.

Type: Multi-Regional (English-Speaking).

Proposal Due Date: March 31, 1998.

Project Dates: July 23–August 13, 1998.

Contact: Lesley Marcus.

Telephone: (202) 205–3058 FAX: (202) 205–0792.

E-Mail Address: lmarcus@usia.gov

This project will look at international terrorism, drug trafficking and other transnational crimes and will examine the structure of the U.S. criminal justice system and how it applies to international issues. As international cooperation is required to prevent and control transnational crime, the participants in this project will have numerous occasions to address the most pressing international crime issues and the United States' unilateral, bilateral, and multi-lateral approaches to dealing with them.

Title: Accountability and Transparency in Government: Improving Results and Increasing Public Access.

Type: African Regional (English-Speaking).

Proposal Due Date: June 2, 1998.

Project Dates: August 31–September 19, 1998.

Contact: Maggie McFarland.

Telephone: (202) 205–9596 FAX: (202) 205–7974.

In an environment of downsizing and streamlining much attention has been directed towards making government in the U.S. more responsive, more productive and more accessible.

This project will introduce African visitors to the U.S. experience of holding public officials accountable. The project will review the complexities of U.S. government at the federal, state, and local levels. It will acquaint the visitors with techniques designed by the founding fathers to hold government accountable as well as those systems and mechanisms in place today. The role of private citizens and the media in reporting abuses which undermine public trust will be emphasized throughout this project. The project will give visitors an idea of the challenges facing state and local governments in improving performance and responsiveness. It will review formal and informal efforts to educate citizens about their civil rights and civic responsibilities. Participants will meet with representatives of local government, business, and community institutions to discuss current cooperative efforts. Enforcement of laws and the independence of the judiciary will be examined in this project. Corruption in American public service and measures of redress will also be reviewed. Lastly, foreign visitors will have an opportunity to consider which mechanisms observed in the U.S. might be applicable in the visitors' countries.

Title: U.S. Financial System.

Type: Multi-Regional (English-Speaking).

Proposal Due Date: June 2, 1998.

Project Dates: September 10–October 1, 1998.

Contacts: Janet Beard.

Telephone: (202) 205–3058 FAX: (202) 205–0792.

E-Mail Address: jbeard@usia.gov.

This project reviews the U.S. banking and financial system, including industry regulation, trends in domestic and foreign investment, and the roles and differences between different players in the financial marketplace. Domestic and international finance issues studied will include changing global finance flows, small community banking, project finance, stock exchanges, and economic trends analysis.

SUPPLEMENTARY INFORMATION:

Overview

Programs must maintain a non-partisan character. Programs and awards must conform to all Agency requirements and guidelines.

Guidelines

USIA seeks proposals from non-profit organizations for development and implementation of professional programs for USIA-sponsored International Visitors to the U.S. who will participate in three Multi-Regional Group Projects (MRPs) and five Regional projects (RPs). A separate proposal is required for each project. Each project will be focussed on a substantive theme. More detailed descriptions of the MPRs and RPs will be included in the Solicitation Package under "Preliminary Project Summaries".

Most projects will be 21 to 30 days in length. Most projects begin in Washington, DC, with an orientation and overview of the issues and a central examination of federal policies regarding these issues. Well-paced project itineraries include programs in four or five communities. Project itineraries will ideally include urban and rural small communities in diverse geographical and cultural regions of the U.S., as appropriate to the project theme. Projects should provide opportunities for participants to experience the diversity of American society and culture. Depending on the size and theme of the project, the participants in Multi-Regional or Regional group projects can be divided into smaller sub-groups for simultaneous visits to different communities, with subsequent opportunities for the visitors to share their experiences with the full group once it is reunited. Project may provide opportunities for the visitors to share a meal or similar experience (home

hospitality) in the home of Americans of diverse occupational, age, gender, and ethnic groups. Some projects might include an opportunity for an overnight stay (home stay) in an American home. The visitors may be provided opportunities to address student, civic, and professional groups on relaxed and informal settings. For some projects, "shadowing" experiences with American professional colleagues may be proposed. As appropriate, opportunities for site visits and hands-on experiences that are relevant to project themes may be included. Projects should also allow time for participants to reflect on their experiences and to share observations with project colleagues. Visitors should have opportunities to visit cultural and tourist sites. Arrangements for community visits must be made through affiliates of the National Council for International Visitors (NCIV). (The NCIV is a national network of private citizen organizations located in more than one hundred U.S. communities, which arrange local programs for International Visitors). In cities where there is no such council, the applicant organization will arrange for coordination of local programs.

The applicant should demonstrate the potential to develop projects, as described above, on a variety of program themes. The applicant is expected to have e-mail capability to consult with USIA Program Officers, and access to internet resources. USIA will provide close coordination and guidance through the duration of the award.

Visa Requirements

Participants in group projects will travel on J–1 visas arranged by USIA. Projects must comply with J–1 visa regulations. Please refer to program specific guidelines in the Solicitation Package for further details.

Tax Requirements

Administration of the projects must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Applicant organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Budget

Applicant organizations are required to submit a comprehensive line-item administrative budget in accordance with the instructions in the Solicitation Package. A summary budget as well as a detailed budget showing all administrative costs is required. Proposed staffing and costs associated with staffing must be appropriate to the requirements outline in the RFP and the remaining portion of the Solicitation Package.

The selected applicant will enter into close consultation on budgetary matters with the responsible USIA Program Officer throughout the implementation of projects, each one of which will have a separate budget. Combined administrative and indirect costs proposed should be reasonable. Cost sharing is encouraged.

The Agency Welcomes Proposals From Organizations That Have Not Received USIA Grants or Assistance Awards in the Past

Agency requirements stipulate that "Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000." It is not expected that any of the projects in this announcement will cost $60,000 or less. It is, therefore, incumbent on organizations to demonstrate four years of successful experience to be eligible for an assistance award.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the E/V Program Officer, as well as one or more of USIA's geographic area offices. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation.

1. *Quality of program design:* Proposals should exhibit originality, substance, precision, and be responsive to requirements stated in the Request for Proposals (RFP) and the 1998 Solicitation Package.

2. *Program planning:* A detailed and relevant work plan should demonstrate substantive intent and logistical capacity. Agenda and plan should adhere to the program overview and guidelines.

3. *Ability to achieve program objectives:* Proposals should clearly demonstrate how the institution will meet the goals of the International Visitor Program.

4. *Multiplier effect/impact:* Proposed projects should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of resources, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials, and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for any past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the potential of new applicants for effective program administration. All applicants must demonstrate a minimum of four years in existence, with proven project management ability and demonstrated fiscal soundness and accountability and a potential for programming visitors from all geographic regions of the world.

8. *Cost-effectiveness:* The administrative and indirect cost components of the proposal, including salaries, should be kept as low as possible.

9. *Cost-sharing:* Consideration will be given to proposed cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase budgets in accordance with the needs of

the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated, and committed through internal USIA procedures.

Dated: October 22, 1997.

Robert Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–28563 Filed 10–29–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Summer Institute for Foreign Policy Officials: The United States Today

ACTION: Notice—Request for Proposals (RFP).

SUMMARY: The U.S. Information Agency's Branch for the Study of the United States announces an open competition for an assistance award program entitled: "Summer Institute for Foreign Policy Officials: The United States Today." Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop and implement a three-week post-graduate level program designed for a multinational group of 18 experienced mid-level foreign affairs professionals. *The program is intended to provide participants with a deeper understanding of American life and institutions through an examination of contemporary political, economic, social and cultural issues, with special reference to domestic trends and issues in American life and their relationship to U.S. policies and actions in the international arena. Tentative program dates are any three week period between May 15 and July 31, 1998.*

USIA is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in a scholarly discipline related to the subject of the institute and that can demonstrate expertise in conducting post-graduate programs for foreign educators. *Applicant institutions must have a minimum of four years experience in conducting international exchange programs.* The project director or one of the key program staff responsible for the academic program must have an advanced degree in a relevant discipline. Staff escorts traveling under the USIA cooperative agreement must be U.S. citizens with demonstrated qualifications for this service.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Name and Number: All communications with USIA concerning this announcement should refer to the above title and reference number E/AAS–98–04.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5:00 p.m. Washington D.C. time on Friday, January 16, 1998. Faxed documents will not be accepted, nor will documents postmarked by the due date but received at a later date. It is the responsibility of each applicant to ensure that proposal submissions arrive by the deadline.

FOR FURTHER INFORMATION CONTACT: U.S. Information Agency, Office of Academic Programs, Branch of the Study of the United States, E/AAS—Room 252, 301 4th Street, S.W., Washington, D.C. 20547, Attention: William Bate, Telephone number: (202) 619–4557, Fax number: (202) 619–6790, Internet address: wbate@usia.gov.

Please use the above information to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals (including specific information on budget preparation).

Please specify USIA Program Officer William Bate on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the office listed above or submitting proposals. Once the RFP deadline has passed, USIA staff may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand

The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Submissions

Applicants must follow all instructions given in the Solicitation Package. The original and 13 copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/AAS–98–04, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", USIA "shall take appropriate steps to provide opportunities for participation in such

programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview and Objectives

"The Summer Institute for Foreign Policy Officials: The United States Today," is intended to provide mid-career foreign affairs professionals with the opportunity to increase their understanding of the politics, society, economy, and culture of the United States at the end of the 20th century. Our working assumption is that the foreign policy decisions of the United States and its actions in the international arena are to a significant degree a reflection of fundamental, albeit shifting, cultural values, embedded in U.S. institutions, public and private, and that a fuller understanding of those institutions will lead in turn to a better understanding of U.S. policies and actions abroad. Accordingly, the Institute should provide participants with both a broad-gauged historical overview of major U.S. institutional and cultural trends—political, economic, social, cultural, religious—and the opportunity for a more intensive treatment and discussion of particular issues and themes that might be subsumed under each of the major "institutional clusters" above, e.g., the role of the Presidency and the Congress in the making of foreign policy; immigration and labor in the United States; church, state and American politics; ethnicity, race and the American identity; and the social impact of technology and the media, to mention only a few of the possible areas for study and discussion. Throughout the seminar, the program should seek to explore how certain aspects of the national debate on political, social and cultural issues bear on the formation and development of American policies in the international arena. At the program's end, participants should have a fuller and more nuanced understanding of the diversity and complexity of contemporary American life, as well as a greater appreciation of the manifold ways in which contemporary American institutional arrangements and cultural values influence U.S. actions abroad.

Accordingly, the Institute should be designed as a coherent, thoughtfully integrated and academically stimulating program that presents a multi-dimensional view of the United States through a series of lectures, readings, panel presentations, and round table discussions. While the program is intended to be an intensive academic seminar designed for a nonacademic audience, the program organizers are encouraged to include a mix of presenters, including university scholars as well as other professionals from government, the private sector, and the media.

The program should be three weeks in length, including at least two weeks of residency at a U.S. college or university, and, depending on the program's design, an integrated study tour segment not to exceed one week in length. Part of that study tour should include a trip to Washington, D.C., where the program content should extend and complement the residency portion of the program. With the exception of the Washington segment, alternately, organizers might choose to spend the entire three-week period in campus residence, with occasional week-end or single-day trips to relevant institutions, sites and cities near the host institution.

Program Dates

Tentative program dates are any three-week period between May 15 and July 31, 1998. The institute must be a total of 21 program days in length. USIA will make every effort to award the approved cooperative agreement by March 1, 1998.

Participants

The program should be designed for 18 highly-motivated and experienced mid-level professionals whose day-to-day work focuses on some aspect of their country's bi-lateral relationship with the United States. Many will come from their country's Ministry of Foreign Affairs; others will be professionals employed by universities of other non-governmental organizations concerned with international and foreign affairs issues. While participants will not be required to possess either a formal or in-depth knowledge of American life and institutions, most are likely to have a working understanding of the United States by virtue of their professional work. Some may have had substantial prior study or work experience in U.S. Participants will be drawn from all regions of the world and will be fluent in English.

Participants will be nominated by U.S. Information Service posts abroad, and selected by the staff of USIA's Branch of the Study of the United States in Washington, D.C. USIA will cover all international travel costs directly.

Guidelines

The conception, design, structure and, ultimately, the content of the institute program is entirely the responsibility of the organizers. However, given the many possible approaches to the development of such a program, organizers are expected to submit proposals that articulate in concrete detail how they intend to organize and implement the institute.

Please refer to the Solicitation Package for further details on program design and implementation, as well as additional information on all other requirements.

Proposed Budget

Unless special circumstances warrant, based on a group of 18 participants, the total USIA-funded budget (program and administrative) should not exceed $145,000, and USIA-funded administrative costs as defined in the budget details section of the solicitation package should not exceed $38,500. Justifications for any costs above these amounts must be clearly indicated in the proposal submission. Any grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Applicant proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive line item budget for the entire program, based on the specific guidance provided in the Solicitation Package. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the "POGI" in the Solicitation Package for complete budget guidelines and formatting instructions for the institute program.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Geographic Area Offices. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance

awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered, and all carry equal weight in the proposal evaluation:

1. Overall Quality: Proposals should exhibit substance and originality, consonant with the highest standards of American teaching and scholarship. Program should reflect an overall design whose various elements are coherently and thoughtfully integrated. Lectures and panels, taken as a whole, should offer a balanced presentation of issues, reflecting both the continuity of the American experience as well as the diversity and dynamism inherent in it.

2. Program Planning: Proposals should demonstrate careful planning. The organization and structure of the institute should be clearly delineated and be fully responsive to all program objectives. The travel component should be an integral and substantive part of the program, reinforcing and complementing its academic segment.

3. Institutional Capacity: Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and media resources should be accessible to participants; housing, transportation and other logistical arrangements should be fully adequate to the needs of participants and should be conducive to a collegial atmosphere.

4. Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. Experience: The proposal should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators.

6. Evaluation and Follow-up: The proposal should include a plan for evaluating activities during the Institute and at its conclusion. Proposals should comment on provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. Administration and Management: The proposals should indicate evidence of continuous on-site administrative and managerial capacity as well as the means by which program activities will be implemented.

8. Cost Effectiveness: The proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal USIA procedures.

Dated: October 24, 1997.

Robert L. Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–28721 Filed 10–29–97; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0582]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Reinstatement

AGENCY: Office Financial Management, Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Financial Management (OFM), Office of Management, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to Federal agencies collecting Internal Revenue Service (IRS) 1099 tax reporting and Federal 1057 socio-economic information on Federal I.M.P.A.C. (International Merchant Purchase Authorization Card) credit card transactions.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 29, 1997.

ADDRESSES: Submit written comments on the collection of information to Martha Orr, Office of Financial Management (047F), Office of Management, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0582" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Martha Orr at (202) 273–9447.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of functions, including whether the information will have practical utility; (2) the accuracy of the burden estimate of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title Form Numbers: Request for IRS 1099-MISC Tax Collection and Federal 1057 Socio-Economic Status, VA Form Letter 4–555.

OMB Control Number: 2900–0582.

Type of Review: Extension of a currently approved collection.

Abstract: Federal agencies are required to collect Internal Revenue

Service (IRS) 1099 tax reporting and Federal 1057 socio-economic information on Federal I.M.P.A.C. (International Merchant Purchase Authorization Card) credit card transactions. The VA, with the assistance of an outside entity, sends VA Form Letter 4–555 to collect the necessary information from merchants the Federal government has done business with using the I.M.P.A.C. credit card. The form letter supports the validity and urgency for the collection of information and provides a standardized format for reporting. The General Services Administration (GSA) could not issue this type of collection of information at this time, due to the current re-procurement status for the purchase credit card.

It is essential to the VA's reporting requirements that this type of information be collected for our I.M.P.A.C. card transactions. By law, VA as well as all Federal agencies, must report 1099 status and also have requirements to report the socio-economic status of the merchants with whom we do business.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 62,500 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 750,000.

Dated: October 7, 1997.

By direction of the Secretary.

Barbara Epps,

Management Analyst, Information Management Service.

[FR Doc. 97–28717 Filed 10–29–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0012]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Extension

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the application for cash surrender or policy loan on Government Life Insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 29, 1997.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0012" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–8310 or FAX (202) 273–5981.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Numbers: Application for Cash Surrender or Policy Loan, VA Form 29–1546.

OMB Control Number: 2900–0012.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used by the insured to apply for cash surrender value or policy loan on his/her Government Life Insurance. The information is used by the VBA to process the insured's request for a loan or cash surrender.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,939 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 29,636.

Dated: October 7, 1997.

By direction of the Secretary.

Barbara Epps,

Management Analyst, Information Management Service.

[FR Doc. 97–28718 Filed 10–29–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0377]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 1, 1997.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0377."

SUPPLEMENTARY INFORMATION:

Title: Claim for Repurchase of Loan, VA Form 26–8084.

OMB Control Number: 2900–0377.

Type of Review: Extension of a currently approved collection.

Abstract: Under 38 CFR 36.4600(d), the holder of a delinquent vendee account is legally entitled to repurchase of the loan by VA when the loan has been continuously in default for 3 months and the amount of the delinquency equals or exceeds the sum of 2 monthly installments. When

requesting repurchase of a loan, the holder uses VA Form 26–8084. Upon receipt of a holder's VA Form 26–8084, the supporting documents are examined to see that all of the documents required have been submitted and that they are sufficient to complete the repurchase. VA Form 26–8084 is compared with the settlement sheet prepared when the loan was sold and examined closely to establish that there are no errors in the holder's methods of computation. Following repurchase by VA, the obligor(s) are notified in writing that VA has repurchased the loan, and the vendee account is serviced and maintained by VA thereafter.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on July 18, 1997 at pages 38606–38607.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 421 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 842.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0377" in any correspondence.

Dated: October 7, 1997.

By direction of the Secretary.

Barbara Epps,

Management Analyst, Information Management Service.

[FR Doc. 97–28715 Filed 10–29–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0222]

Agency Information Collection Activities Under OMB Review

AGENCY: National Cemetery System, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the National Cemetery System (NCS), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 1, 1997.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0222."

SUPPLEMENTARY INFORMATION:

Title and Form Number: Application for Standard Government Headstone or Marker for Installation in a Private or State Veterans' Cemetery, VA Form 40–1330.

OMB Control Number: 2900–0222.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the public to apply for the benefit of Government-provided headstones or markers for unmarked graves of eligible veterans in accordance with Title 38, U.S.C., Section 906. It is the source of information used to evaluate the applicant's claim for the benefit.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on August 7, 1997 at pages 42626–42627.

Affected Public: Individuals or households; State, Local or Tribal Government.

Estimated Annual Burden: 85,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 340,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0222" in any correspondence.

Dated: October 7, 1997.

By direction of the Secretary.

Barbara Epps,

Management Analyst, Information Management Service.

[FR Doc. 97–28716 Filed 10–29–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0432]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 1, 1997.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0432."

SUPPLEMENTARY INFORMATION:

Titles and Form Numbers: Invitation, Bid, and/or Acceptance or Authorization, VA Form 26–6724.

OMB Control Number: 2900–0432.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used to solicit competitive bids or serves as a work order for the repair of properties acquired by the VA. In addition, the form serves as a record of a contractor's bid, the VA's acceptance of a bid, inspection of completed work, and a contractor's invoice and payment authorization. Without the use of VA Form 26–6724, the VA would have to rely on contractors to submit bids on separate documents and would not have the advantage of a single record of each repair program's specification, bid, acceptance, inspection, and payment authorization.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on October 31, 1996 at page 56267.

Affected Public: Business or other for-profit.

Estimated Total Annual Burden: The annual burden is estimated at 25,000 hours. However, VA is requesting one (1) hour inventory purposes only. The solicitation of bids is a common practice in the real estate management industry and the submission of bids is routine with repair contractors.

Estimated Total Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Number of Respondents: 50,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0432" in any correspondence.

Dated: October 8, 1997.

By direction of the Secretary.

Barbara Epps,

Management Analyst, Information Management Service.

[FR Doc. 97–28719 Filed 10–29–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0438]

Agency information Collection Activities Under OMB Review

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Office of Management, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 1, 1997.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0438."

SUPPLEMENTARY INFORMATION:

Title: 38 CFR 1.519(a) Lists of Names and Addresses.

OMB Control Number: 2900–0438.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: Title 38, U.S.C., 5701(f)(1) authorizes the VA to disclose mailing lists of veterans and their dependents to nonprofit organizations, but only for certain specific and narrow purposes. Criminal penalties are provided for improper use of the list by the organization in violation of subsection (f) limitations. The information collection in this regulation ensures that any disclosure of a list under this subsection is authorized by law. The VA must ascertain that the applicant is a nonprofit organization and intends to use the list for a proper purpose; if not, Title 38, U.S.C., 5701(a) prohibits disclosure. The additional information collection (specific geographic locations, point of contact, type of output and signature of organization head) is necessary to ensure timely and accurate processing of each application. Failure to obtain this information will prevent the Department from fulfilling its statutory obligations.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on July 16, 1997 at pages 38194–38195.

Affected Public: Not-for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden: 103 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 103.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–4650. Please refer to "OMB Control No. 2900–0438" in any correspondence.

Dated: October 8, 1997.

By direction of the Secretary:

Barbara Epps,

Management Analyst, Information Management Service.

[FR Doc. 97–28720 Filed 10–29–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of matching program.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program. This will match personnel records of the Department of Defense (DOD) with VA records of benefit recipients under the Montgomery GI Bill.

The goal of these matches is to identify the eligibility status of veterans, servicemembers, and reservists who have applied for or who are receiving education benefit payments under the Montgomery GI Bill. The purpose of the match is to enable VA to verify that individuals meet the conditions of military service and eligibility criteria for payment of benefits determined by VA under the Montgomery GI Bill—Active Duty (MGIB) and the Montgomery GI Bill—Selected Reserve (MGIB–SR).

DATES: This match will commence on December 1, 1997. At the expiration of 18 months after the commencing date the departments may renew the agreement for another 12 months.

FOR FURTHER INFORMATION CONTACT: John L. Fox (224), Assistant Director for Procedures and Systems, Education Service, Veterans Benefit Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–7182.

SUPPLEMENTARY INFORMATION: Further Information regarding the matching program is provided below. This information is required by paragraph 6c of the "Guidelines on the Conduct of Matching Programs" issued by the Office of Management and Budget (OMB) (54 FR 25818), as amended by OMB Circular A–130, 61 FR 6435 (1996). A copy of this has been provided to both Houses of Congress and the Office of Management and Budget. The matching program is subject to their review.

a. *Names of participating agencies:* Department of Defense and Department of Veterans Affairs.

b. *Purpose of the match:* The purpose of the match is to enable VA to determine whether an applicant is eligible for payment of benefits under the MGIB or the MGIB–SR and to verify continued compliance with the requirements of both programs.

c. *Authority:* The authority to conduct this match is found in 38 U.S.C. 3684A(a)(1).

d. *Categories of records and individuals covered:* The records covered include eligibility records extracted from DOD personnel files and benefit records that VA establishes for all individuals who have applied for and/or are receiving, or have received education benefit payments under the Montgomery GI Bill. These benefit records are contained in a VA system of records identified as 58VA21/22 entitled: Compensation, Pension, Education and Rehabilitation Records—VA, last published in the **Federal Register** at 60 FR 20156.

e. *Inclusive dates of the matching program:* The match will begin on December 1, 1997 or 40 days after the OMB review period, whichever is later and continue in effect for 18 months.

f. *Address for receipt of public inquiries or comments:* Interested individuals may submit written comments to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1154, Washington, DC 20420. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between 8:00 a.m. and 4:30 p.m.

Approved: October 23, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

[FR Doc. 97–28712 Filed 10–29–97; 8:45 am]

BILLING CODE 8320–01–M

federal register

Thursday
October 30, 1997

Part II

Office of Management and Budget

Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity; Notices

OFFICE OF MANAGEMENT AND BUDGET

Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Information and Regulatory Affairs.

ACTION: Notice of decision.

SUMMARY: By this Notice, OMB is announcing its decision concerning the revision of Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting. OMB is accepting the recommendations of the Interagency Committee for the Review of the Racial and Ethnic Standards with the following two modifications: (1) the Asian or Pacific Islander category will be separated into two categories—"Asian" and "Native Hawaiian or Other Pacific Islander," and (2) the term "Hispanic" will be changed to "Hispanic or Latino."

The revised standards will have five minimum categories for data on race: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. There will be two categories for data on ethnicity: "Hispanic or Latino" and "Not Hispanic or Latino."

The Supplementary Information in this Notice provides background information on the standards (Section A); a summary of the comprehensive review process that began in July 1993 (Section B); a brief synopsis of the public comments OMB received on the recommendations for changes to the standards in response to the July 9, 1997, **Federal Register** Notice (Section C); OMB's decisions on the specific recommendations of the Interagency Committee (Section D); and information on the work that is underway on tabulation issues associated with the reporting of multiple race responses (Section E).

The revised standards for the classification of Federal data on race and ethnicity are presented at the end of this notice; they replace and supersede Statistical Policy Directive No. 15.

EFFECTIVE DATE: The new standards will be used by the Bureau of the Census in the 2000 decennial census. Other Federal programs should adopt the standards as soon as possible, but not later than January 1, 2003, for use in household surveys, administrative forms and records, and other data collections. In addition, OMB has approved the use of the new standards by the Bureau of the Census in the "Dress Rehearsal" for Census 2000 scheduled to be conducted in March 1998.

ADDRESSES: Please send correspondence about OMB's decision to: Katherine K. Wallman, Chief Statistician, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10201 New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503; fax: (202) 395–7245.

ELECTRONIC AVAILABILITY AND ADDRESSES: This **Federal Register** Notice and the related OMB Notices of June 9, 1994, August 28, 1995, and July 9, 1997, are available electronically from the OMB Homepage on the World Wide Web: <<http://www.whitehouse.gov/WH/EOP/OMB/html/fedreg.html>>.

Federal Register Notices are also available electronically from the U.S. Government Printing Office web site: <<http:/www.access.gpo.gov/su_docs/aces/aces140.html>>. Questions about accessing the **Federal Register** online via *GPO Access* may be directed to telephone (202) 512-1530 or toll free at (888) 293–6498; to fax (202) 512–1262; or to E-mail <<gpoaccess@gpo.gov>>.

This Notice is available in paper copy from the OMB Publications Office, 725 17th Street, NW, NEOB, Room 2200, Washington, D.C. 20503; telephone (202) 395-7332; fax (202) 395–6137.

FOR FURTHER INFORMATION CONTACT: Suzann Evinger, Statistical Policy Office, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10201, 725 17th Street, N.W., Washington, D.C. 20503; telephone: (202) 395–3093; fax (202) 395–7245.

SUPPLEMENTARY INFORMATION:

A. Background

For more than 20 years, the current standards in OMB's Statistical Policy Directive No. 15 have provided a common language to promote uniformity and comparability for data on race and ethnicity for the population groups specified in the Directive. They were developed in cooperation with Federal agencies to provide consistent data on race and ethnicity throughout the Federal Government. Development of the data standards stemmed in large measure from new responsibilities to enforce civil rights laws. Data were needed to monitor equal access in housing, education, employment, and other areas, for populations that historically had experienced discrimination and differential treatment because of their race or ethnicity. The standards are used not only in the decennial census (which provides the data for the "denominator" for many measures), but also in household surveys, on administrative forms (e.g., school registration and mortgage lending applications), and in medical and other research. The categories represent a social-political construct designed for collecting data on the race and ethnicity of broad population groups in this country, and are not anthropologically or scientifically based.

B. Comprehensive Review Process

Particularly since the 1990 census, the standards have come under increasing criticism from those who believe that the minimum categories set forth in Directive No. 15 do not reflect the increasing diversity of our Nation's population that has resulted primarily from growth in immigration and in interracial marriages. In response to the criticisms, OMB announced in July 1993 that it would undertake a comprehensive review of the current categories for data on race and ethnicity.

This review has been conducted over the last four years in collaboration with the Interagency Committee for the Review of the Racial and Ethnic Standards, which OMB established in March 1994 to facilitate the participation of Federal agencies in the review. The members of the Interagency Committee, from more than 30 agencies, represent the many and diverse Federal needs for data on race and ethnicity, including statutory requirements for such data. The Interagency Committee developed the following principles to govern the review process:

1. The racial and ethnic categories set forth in the standards should not be interpreted as being primarily biological or genetic in reference. Race and ethnicity may be thought of in terms of social and cultural characteristics as well as ancestry.

2. Respect for individual dignity should guide the processes and methods for collecting data on race and ethnicity; ideally, respondent self-identification should be facilitated to the greatest extent possible, recognizing that in some data collection systems observer identification is more practical.

3. To the extent practicable, the concepts and terminology should reflect clear and generally understood definitions that can achieve broad public acceptance. To assure they are reliable, meaningful, and understood by respondents and observers, the racial and ethnic categories set forth in the standard should be developed using

appropriate scientific methodologies, including the social sciences.

4. The racial and ethnic categories should be comprehensive in coverage and produce compatible, nonduplicative, exchangeable data across Federal agencies.

5. Foremost consideration should be given to data aggregations by race and ethnicity that are useful for statistical analysis and program administration and assessment, bearing in mind that the standards are not intended to be used to establish eligibility for participation in any federal program.

6. The standards should be developed to meet, at a minimum, Federal legislative and programmatic requirements. Consideration should also be given to needs at the State and local government levels, including American Indian tribal and Alaska Native village governments, as well as to general societal needs for these data.

7. The categories should set forth a minimum standard; additional categories should be permitted provided they can be aggregated to the standard categories. The number of standard categories should be kept to a manageable size, determined by statistical concerns and data needs.

8. A revised set of categories should be operationally feasible in terms of burden placed upon respondents; public and private costs to implement the revisions should be a factor in the decision.

9. Any changes in the categories should be based on sound methodological research and should include evaluations of the impact of any changes not only on the usefulness of the resulting data but also on the comparability of any new categories with the existing ones.

10. Any revision to the categories should provide for a crosswalk at the time of adoption between the old and the new categories so that historical data series can be statistically adjusted and comparisons can be made.

11. Because of the many and varied needs and strong interdependence of Federal agencies for racial and ethnic data, any changes to the existing categories should be the product of an interagency collaborative effort.

12. Time will be allowed to phase in any new categories. Agencies will not be required to update historical records.

13. The new directive should be applicable throughout the U.S. Federal statistical system. The standard or standards must be usable for the decennial census, current surveys, and administrative records, including those using observer identification.

The principal objective of the review has been to enhance the accuracy of the demographic information collected by the Federal Government. The starting point for the review was the minimum set of categories for data on race and ethnicity that have provided information for more than 20 years for a variety of purposes, and the recognition of the importance of being able to maintain this historical continuity. The review process has had two major elements: (1) public comment on the present standards, which helped to identify concerns and provided numerous suggestions for changing the standards; and (2) research and testing related to assessing the possible effects of suggested changes on the quality and usefulness of the resulting data.

Public input, the first element of the review process, was sought through a variety of means: (1) During 1993, Congressman Thomas C. Sawyer, then Chairman of the House Subcommittee on Census, Statistics, and Postal Personnel, held four hearings that included 27 witnesses, focusing particularly on the use of the categories in the 2000 census. (2) At the request of OMB, the National Academy of Sciences' Committee on National Statistics (CNSTAT) conducted a workshop in February 1994 to articulate issues surrounding a review of the categories. The workshop included representatives of Federal agencies, academia, social science research institutions, interest groups, private industry, and a local school district. (A summary of the workshop, *Spotlight on Heterogeneity: The Federal Standards for Racial and Ethnic Classification,* is available from CNSTAT, 2101 Constitution Avenue, N.W., Washington, D.C. 20418.) (3) On June 9, 1994, OMB published a **Federal Register** (59 FR 29831–29835) Notice that contained background information on the development of the current standards and requested public comment on: the adequacy of current racial and ethnic categories; the principles that should govern any proposed revisions to the standards; and specific suggestions for change that had been offered by individuals and interested groups over a period of several years. In response, OMB received nearly 800 letters. As part of this comment period and to bring the review closer to the public, OMB also heard testimony from 94 witnesses at hearings held during July 1994 in Boston, Denver, San Francisco, and Honolulu. (4) In an August 28, 1995, **Federal Register** (60 FR 44674–44693) Notice, OMB provided an interim report on the review process, including a summary of the comments on the June 1994 **Federal Register** Notice, and offered a final opportunity for comment on the research to be conducted during 1996. (5) OMB staff have also discussed the review process with various interested groups and have made presentations at numerous meetings.

The second element of the review process involved research and testing of various proposed changes. The categories in OMB's Directive No. 15 are used not only to produce data on the demographic characteristics of the population, but also to monitor civil rights enforcement and program implementation. Research was undertaken to provide an objective assessment of the data quality issues associated with various approaches to collecting data on race and ethnicity. To that end, the Interagency Committee's Research Working Group, co-chaired by the Bureau of the Census and the Bureau of Labor Statistics, reviewed the various criticisms and suggestions for changing the current categories, and developed a research agenda for some of the more significant issues that had been identified. These issues included how to collect data on persons who identify themselves as "multiracial"; whether to combine race and Hispanic origin in one question or have separate questions on race and Hispanic origin; whether to combine the concepts of race, ethnicity, and ancestry; whether to change the terminology used for particular categories; and whether to add new categories to the current minimum set.

Because the mode of data collection can have an effect on how a person responds, the research agenda proposed studies both in surveys using in-person or telephone interviews and in self-administered questionnaires, such as the decennial census, which are filled out by the respondent and mailed back. Cognitive interviews were conducted with various groups to provide guidance on the wording of the questions and the instructions for the tests and studies.

The research agenda included several major national tests, the results of which are discussed throughout the Interagency Committee's *Report to the Office of Management and Budget on the Review of Statistical Policy Directive No. 15*: (1) In May 1995, the Bureau of Labor Statistics (BLS) sponsored a Supplement on Race and Ethnicity to the Current Population Survey (CPS). The findings were made available in a 1996 report, *Testing Methods of Collecting Racial and Ethnic Information: Results of the Current Population Survey Supplement on Race*

and Ethnicity, available from BLS, 2 Massachusetts Avenue, N.E., Room 4915, Postal Square Building, Washington, D.C. 20212, or by calling 202–606–7375. The results were also summarized in an October 26, 1995, news release, which is available electronically at <<http://stats.bls.gov/news.release/ethnic.toc.htm>>. (2) The Bureau of the Census, as part of its research for the 2000 census, tested alternative approaches to collecting data on race and ethnicity in the March 1996 National Content Survey (NCS). The Census Bureau published the results in a December 1996 report, *Findings on Questions on Race and Hispanic Origin Tested in the 1996 National Content Survey;* highlights of the report are available at <<http://www.census.gov/population/www/socdemo/96natcontentsurvey.html>>. (3) In June 1996, the Census Bureau conducted the Race and Ethnic Targeted Test (RAETT), which was designed to permit assessments of the effects of possible changes on smaller populations not reliably measured in national samples, including American Indians, Alaska Natives, detailed Asian and Pacific Islander groups (such as Chinese and Hawaiians), and detailed Hispanic groups (such as Puerto Ricans and Cubans). The Census Bureau released the results in a May 1997 report, *Results of the 1996 Race and Ethnic Targeted Test;* highlights of the report are available at <<http://www/census.gov/population/www/documentation/twps-0018.html>>. Single copies (paper) of the NCS and RAETT reports may be obtained from the Population Division, U.S. Bureau of the Census, Washington, D.C. 20233; telephone 301–457–2402.

In addition to these three major tests, the National Center for Education Statistics (NCES) and the Office for Civil Rights in the Department of Education jointly conducted a survey of 1,000 public schools to determine how schools collect data on the race and ethnicity of their students and how the administrative records containing these data are maintained to meet statutory requirements for reporting aggregate information to the Federal Government. NCES published the results in a March 1996 report, *Racial and Ethnic Classifications Used by Public Schools* (NCES 96–092). The report is available electronically at <<http://nces.ed.gov/pubs/96092.html>>. Single paper copies may be obtained from NCES, 555 New Jersey, NW, Washington, D.C. 20208–5574, or by calling 202–219–1442.

The research agenda also included studies conducted by the National Center for Health Statistics, the Office of the Assistant Secretary for Health, and the Centers for Disease Control and Prevention to evaluate the procedures used and the quality of the information on race and ethnicity in administrative records such as that reported on birth certificates and recorded on death certificates.

On July 9, 1997, OMB published a **Federal Register** Notice (62 FR 36874–36946) containing the Interagency Committee's *Report to the Office of Management and Budget on the Review of Statistical Policy Directive No. 15.* The Notice made available for comment the Interagency Committee's recommendations for how OMB should revise Directive No. 15. The report consists of six chapters. Chapter 1 provides a brief history of Directive No. 15, a summary of the issues considered by the Interagency Committee, a review of the research activities, and a discussion of the criteria used in conducting the evaluation. Chapter 2 discusses a number of general concerns that need to be addressed when considering any changes to the current standards. Chapters 3 through 5 report the results of the research as they bear on the more significant suggestions OMB received for changes to Directive No. 15. Chapter 6 gives the Interagency's Committee's recommendations concerning the various suggested changes based on a review of public comments and testimony and the research results.

C. Summary of Comments Received on the Interagency Committee's Recommendations

In response to the July 9, 1997, **Federal Register** Notice, OMB received approximately 300 letters (many of them hand written) on a variety of issues, plus approximately 7000 individually signed and mailed, preprinted postcards on the issue of classifying data on Native Hawaiians, and about 500 individually signed form letters from members of the Hapa Issues Forum in support of adopting the recommendation for multiple race reporting. Some of the 300 letters focused on a single recommendation of particular interest to the writer, while other letters addressed a number of the recommendations. The preponderance of the comments were from individuals. Each comment was considered in preparing OMB's decision.

1. Comments on Recommendations Concerning Reporting More Than One Race

The Interagency Committee recommended that, when self-identification is used, respondents who wish to identify their mixed racial heritage should be able to mark or select more than one of the racial categories originally specified in Directive No. 15, but that there should not be a "multiracial" category. This recommendation to report multiple races was favorably received by most of those commenting on it, including associations and organizations such as the American Medical Association, the National Education Association, the National Council of La Raza, and the National Committee on Vital and Health Statistics, as well as all Federal agencies that responded. Comments from some organizations, such as the NAACP Legal Defense and Educational Fund, the Lawyers' Committee for Civil Rights Under Law, and the Equal Employment Advisory Council, were receptive to the recommendation on multiple race responses, but expressed reservations pending development of tabulation methods to ensure the utility of these data. The recommendation was also supported by many of the advocacy groups that had earlier supported a "multiracial" (box) category, such as the Association of MultiEthnic Americans and its affiliates nationwide. Several individuals wrote in support of "multiple race" reporting, basing their comments on a September 1997 article, "What Race Am I?" in *Mademoiselle* magazine, which urged its readers "to express an opinion on whether or not a 'Multiracial' category should be included in all federal recordkeeping, including the 2000 census." A few comments specifically favoring multiple race responses suggested that respondents should also be asked to indicate their primary racial affiliation in order to facilitate the tabulation of responses. A handful of comments on multiple race reporting suggested that individuals with both Hispanic and non-Hispanic heritages be permitted to mark or select both categories (see discussion below).

A few comments, in particular some from state agencies and legislatures, opposed any multiple race reporting because of possible increased costs to collect the information and implementation problems. Comments from the American Indian tribal governments also were opposed to the recommendation concerning reporting more than one race. A number of the comments that supported multiple race responses also expressed concern about the cost and burden of collecting the information to meet Federal reporting requirements, the schedule for implementation, and how the data would be tabulated to meet the requirements of legislative redistricting

and enforcement of the Voting Rights Act. A few comments expressed support for categories called "human," or "American"; several proposed that there be no collection of data on race.

2. Comments on Recommendation for Classification of Data on Native Hawaiians

The Interagency Committee recommended that data on Native Hawaiians continue to be classified in the Asian or Pacific Islander category. This recommendation was opposed by the Hawaiian congressional delegation, the 7,000 individuals who signed and sent preprinted yellow postcards, the State of Hawaii departments and legislature, Hawaiian organizations, and other individuals who commented on this recommendation. Instead, the comments from these individuals supported reclassifying Native Hawaiians in the American Indian or Alaska Native category, which they view as an "indigenous peoples" category (although this category has not been considered or portrayed in this manner in the standards). Native Hawaiians, as the descendants of the original inhabitants of what is now the State of Hawaii, believe that as indigenous people they should be classified in the same category as American Indians and Alaska Natives. On the other hand, the American Indian tribal governments have opposed such a reclassification, primarily because they view the data obtained from that category as being essential for administering Federal programs for American Indians. Comments from the Native Hawaiians also noted the Asian or Pacific Islander category provides inadequate data for monitoring the social and economic conditions of Native Hawaiians and other Pacific Islander groups. Because the Interagency Committee had recommended against adding categories to the minimum set of categories, requesting a separate category for Native Hawaiians was not viewed as an option by those who commented.

3. Comments on Recommendation Concerning Classification of Data on Central and South American Indians

The Interagency Committee recommended that data for Central and South American Indians be included in the American Indian or Alaska Native category. Several comments from the American Indian community opposed this recommendation. Moreover, comments from some Native Hawaiians pointed out what they believed to be an inconsistency in the Interagency Committee's recommendation to include in the American Indian or Alaska Native category descendants of Central and South American Indians—persons who are not original peoples of the United States—if Native Hawaiians were not to be included.

4. Comments on Recommendation Not to Add an Arab or Middle Eastern Ethnic Category

The Interagency Committee recommended that an Arab or Middle Eastern ethnic category should not be added to the minimum standards for all reporting of Federal data on race and ethnicity. Several comments were received in support of having a separate category in order to have data viewed as necessary to monitor discrimination against this population.

5. Comments on Recommendations for Terminology

Comments on terminology largely supported the Interagency Committee's recommendations to retain the term "American Indian," to change "Hawaiian" to "Native Hawaiian," and to change "Black" to "Black or African American." There were a few requests to include "Latino" in the category name for the Hispanic population.

D. OMB's Decisions

This section of the Notice provides information on the decisions taken by OMB on the recommendations that were proposed by the Interagency Committee. The Committee's recommendations addressed options for reporting by respondents, formats of questions, and several aspects of specific categories, including possible additions, revised terminology, and changes in definitions. In reviewing OMB's decisions on the recommendations for collecting data on race and ethnicity, it is useful to remember that these decisions:

- retain the concept that the standards provide a *minimum* set of categories for data on race and ethnicity;
- permit the collection of more detailed information on population groups provided that any additional categories can be aggregated into the minimum standard set of categories;
- underscore that self-identification is the preferred means of obtaining information about an individual's race and ethnicity, except in instances where observer identification is more practical (e.g., completing a death certificate);
- do *not* identify or designate certain population groups as "minority groups";
- continue the policy that the categories are *not* to be used for determining the eligibility of population groups for participation in any Federal programs;
- do *not* establish criteria or qualifications (such as blood quantum levels) that are to be used in determining a particular individual's racial or ethnic classification; and
- do *not* tell an individual who he or she is, or specify how an individual should classify himself or herself.

In arriving at its decisions, OMB took into account not only the public comment on the recommendations published in the **Federal Register** on July 9, 1997, but also the considerable amount of information provided during the four years of this review process, including public comments gathered from hearings and responses to two earlier OMB Notices (on June 9, 1994, and August 28, 1995). The OMB decisions benefited greatly from the participation of the public that served as a constant reminder that there are real people represented by the data on race and ethnicity and that this is for many a deeply personal issue. In addition, the OMB decisions benefited from the results of the research and testing on how individuals identify themselves that was undertaken as part of this review process. This research, including several national tests of alternative approaches to collecting data on race and ethnicity, was developed and conducted by the professional statisticians and analysts at several Federal agencies. They are to be commended for their perseverance, dedication, and professional commitment to this challenging project.

OMB also considered in reaching its decisions the extent to which the recommendations were consistent with the set of principles (see Section B of the Supplementary Information) developed by the Interagency Committee to guide the review of this sensitive and substantively complex issue. OMB believes that the Interagency Committee's recommendations took into account the principles and achieved a reasonable balance with respect to statistical issues, data needs, social concerns, and the personal dimensions of racial and ethnic identification. OMB also finds that the Committee's recommendations are consistent with the principal objective of the review, which is to enhance the accuracy of the demographic information collected by the Federal Government by having categories for data on race and ethnicity that will enable the capture of information about the increasing diversity of our Nation's population while at the same time respecting each individual's dignity.

As indicated in detail below, OMB accepts the Interagency Committee's recommendations concerning reporting more than one race, including the recommendation that there be no category called "multiracial," the formats and sequencing of the questions on race and Hispanic origin, and most of the changes to terminology.

OMB does not accept the Interagency Committee's recommendations concerning the classification of data on the Native Hawaiian population and the terminology for Hispanics, and it has instead decided to make the changes that follow.

Native Hawaiian classification.—OMB does not accept the recommendation concerning the continued classification of Hawaiians in the Asian or Pacific Islander category. *Instead, OMB has decided to break apart the Asian or Pacific Islander category into two categories—one called "Asian" and the other called "Native Hawaiian or Other Pacific Islander."* As a result, there will be five categories in the minimum set for data on race.

The "Native Hawaiian or Other Pacific Islander" category will be defined as "A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands." (The term "Native Hawaiian" does not include individuals who are native to the State of Hawaii by virtue of being born there.) In addition to Native Hawaiians, Guamanians, and Samoans, this category would include the following Pacific Islander groups reported in the 1990 census: Carolinian, Fijian, Kosraean, Melanesian, Micronesian, Northern Mariana Islander, Palauan, Papua New Guinean, Ponapean (Pohnpelan), Polynesian, Solomon Islander, Tahitian, Tarawa Islander, Tokelauan, Tongan, Trukese (Chuukese), and Yapese.

The "Asian" category will be defined as "A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam."

The Native Hawaiians presented compelling arguments that the standards must facilitate the production of data to describe their social and economic situation and to monitor discrimination against Native Hawaiians in housing, education, employment, and other areas. Under the current standards for data on race and ethnicity, Native Hawaiians comprise about three percent of the Asian and Pacific Islander population. By creating separate categories, the data on the Native Hawaiians and other Pacific Islander groups will no longer be overwhelmed by the aggregate data of the much larger Asian groups. Native Hawaiians will comprise about 60 percent of the new category.

The Asian, Native Hawaiian, and Pacific Islander population groups are well defined; moreover, there has been experience with reporting in separate categories for the Native Hawaiian and Pacific Islander population groups. The 1990 census included "Hawaiian," "Samoan," and "Guamanian" as response categories to the race question. In addition, two of the major tests conducted as part of the current review (the NCS and the RAETT) used "Hawaiian" and/or "Native Hawaiian," "Samoan," "Guamanian," and "Guamanian or Chamorro" as response options to the race question. These factors facilitate breaking apart the current category.

Terminology for Hispanics.—OMB does not accept the recommendation to retain the single term "Hispanic." *Instead, OMB has decided that the term should be "Hispanic or Latino."* Because regional usage of the terms differs—Hispanic is commonly used in the eastern portion of the United States, whereas Latino is commonly used in the western portion—this change may contribute to improved response rates.

The OMB decisions on the Interagency Committee's specific recommendations are presented below:

(1) OMB accepts the following recommendations concerning reporting more than one race:

- *When self-identification is used, a method for reporting more than one race should be adopted.*
- *The method for respondents to report more than one race should take the form of multiple responses to a single question and not a "multiracial" category.*
- *When a list of races is provided to respondents, the list should not contain a "multiracial" category.*
- *Based on research conducted so far, two recommended forms for the instruction accompanying the multiple response question are "Mark one or more * * *" and "Select one or more * * *"*
- *If the criteria for data quality and confidentiality are met, provision should be made to report, at a minimum, the number of individuals identifying with more than one race. Data producers are encouraged to provide greater detail about the distribution of multiple responses.*
- *The new standards will be used in the decennial census, and other data producers should conform as soon as possible, but not later than January 1, 2003.*

(2) OMB accepts the following recommendations concerning a combined race and Hispanic ethnicity question:

- *When self-identification is used, the two question format should be used, with the race question allowing the reporting of more than one race.*
- *When self-identification is not feasible or appropriate, a combined question can be used and should include a separate Hispanic category co-equal with the other categories.*
- *When the combined question is used, an attempt should be made, when appropriate, to record ethnicity and race or multiple races, but the option to indicate only one category is acceptable.*

(3) OMB accepts the following recommendations concerning the retention of both reporting formats:

- *The two question format should be used in all cases involving self-identification.*
- *The current combined question format should be changed and replaced with a new format which includes a co-equal Hispanic category for use, if necessary, in observer identification.*

(4) OMB accepts the following recommendation concerning the ordering of the Hispanic origin and race questions:

- *When the two question format is used, the Hispanic origin question should precede the race question.*

(5) OMB accepts the following recommendation concerning adding Cape Verdean as an ethnic category:

- *A Cape Verdean ethnic category should not be added to the minimum data collection standards.*

(6) OMB accepts the following recommendation concerning the addition of an Arab or Middle Eastern ethnic category:

- *An Arab or Middle Eastern ethnic category should not be added to the minimum data standards.*

(7) OMB interprets the recommendation not to add any other categories to mean the expansion of the minimum set to include new population groups. The OMB decision to break apart the "Asian or Pacific Islander" category does not create a category for a new population group.

(8) OMB accepts the following recommendation concerning changing the term "American Indian" to "Native American":

- *The term American Indian should not be changed to Native American.*

(9) OMB accepts the following recommendation concerning changing the term "Hawaiian" to "Native Hawaiian":

• *The term "Hawaiian" should be changed to "Native Hawaiian."*

(10) OMB does not accept the recommendation concerning the continued classification of Native Hawaiians in the Asian or Pacific Islander category.

• *OMB has decided to break apart the Asian or Pacific Islander category into two categories—one called "Asian" and the other called "Native Hawaiian or Other Pacific Islander." As a result, there are five categories in the minimum set for data on race.*

• *The "Native Hawaiian or Other Pacific Islander" category is defined as "A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands."*

• *The "Asian" category is defined as "A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam."*

(11) OMB accepts the following recommendations concerning the use of "Alaska Native" instead of "Eskimo" and "Aleut": "Alaska Native" should replace the term "Alaskan Native."

• *Alaska Native should be used instead of Eskimo and Aleut.*

• The Alaska Native response option should be accompanied by a request for tribal affiliation when possible.

(12) OMB accepts the following recommendations concerning the classification of Central and South American Indians:

• *Central and South American Indians should be classified as American Indian.*

• *The definition of the "American Indian or Alaska Native" category should be modified to include the original peoples from Central and South America.*

• *In addition, OMB has decided to make the definition for the American Indian or Alaska Native category more consistent with the definitions of the other categories.*

(13) OMB accepts the following recommendations concerning the term or terms to be used for the name of the Black category:

• *The name of the Black category should be changed to "Black or African American."*

• *The category definition should remain unchanged.*

• *Additional terms, such as Haitian or Negro, can be used if desired.*

(14) OMB decided to modify the recommendations concerning the term or terms to be used for Hispanic:

• *The term used should be "Hispanic or Latino."*

• *The definition of the category should remain unchanged.*

• *In addition, the term "Spanish Origin," can be used if desired.*

Accordingly, the Office of Management and Budget adopts and issues the revised minimum standards for Federal data on race and ethnicity for major population groups in the United States which are set forth at the end of this Notice.

Topics for Further Research

There are two areas where OMB accepts the Interagency Committee's recommendations but believes that further research is needed: (1) multiple responses to the Hispanic origin question and (2) an ethnic category for Arabs/Middle Easterners.

Multiple Responses to the Hispanic Origin Question.—The Interagency Committee recommended that respondents to Federal data collections should be permitted to report more than one race. During the most recent public comment process, a few comments suggested that the concept of "marking more than one box" should be extended to the Hispanic origin question. Respondents are now asked to indicate if they are "of Hispanic origin" *or* "not of Hispanic origin." Allowing individuals to select more than one response to the ethnicity question would provide the opportunity to indicate ethnic heritage that is both Hispanic and non-Hispanic.

The term "Hispanic" refers to persons who trace their origin or descent to Mexico, Puerto Rico, Cuba, Central and South America, and other Spanish cultures. While there has been considerable public concern about the need to review Directive No. 15 with respect to classifying individuals of mixed racial heritage, there has been little comment on reporting both an Hispanic and a non-Hispanic origin. On many Federal forms, Hispanics can also express a racial identity on a separate race question. In the decennial census, individuals who consider themselves part Hispanic can also indicate additional heritages in the ancestry question.

On one hand, it can be argued that allowing individuals to mark both categories in the Hispanic origin question would parallel the instruction "to mark (or select) one or more" racial categories. Individuals would not have to choose between their parents' ethnic heritages, and movement toward an increasingly diverse society would be recognized.

On the other hand, because the matter of multiple responses to the Hispanic ethnicity question was not raised in the early phases of the public comment process, no explicit provisions were made for testing this approach in the research conducted to inform the review of Directive No. 15. While a considerable amount of research was focused on how to improve the response rate to the Hispanic origin question, it is unclear whether and to what extent explicitly permitting multiple responses to the Hispanic origin question would affect nonresponse to the race question or hamper obtaining more detailed data on Hispanic population groups.

Information on the possible impact of any changes on the quality of the data has been an essential element of the review. While the effects of changes in the Hispanic origin question are unknown, they could conceivably be substantial. Thus, OMB has decided *not* to include a provision in the standards that would explicitly permit respondents to select both "Hispanic origin" and "Not of Hispanic Origin" options. OMB believes that this is an item for future research. In the meantime, the ancestry question on the decennial census long form does provide respondents who consider themselves part Hispanic to write in additional heritages.

Research on an Arab/Middle Easterner category.—During the public comment process, OMB received a number of requests to add an ethnic category for Arabs/Middle Easterners so that data could be obtained that could be useful in monitoring discrimination. The public comment process indicated, however, that there was no agreement on a definition for this category. The combined race, Hispanic origin, and ancestry question in the RAETT, which was designed to address requests that were received from groups for establishing separate categories, did not provide a solution.

While OMB accepted the Interagency's Committee recommendation not to create a new category for this population group, OMB believes that further research should be done to determine the best way to improve data on this population group. Meanwhile, the write-ins to the ancestry question on the decennial census long form will continue to provide information on the number of individuals who identify their heritage as Arab or Middle Easterner.

E. Tabulation Issues

The revised standards retain the concept of a minimum set of categories for Federal data on race and ethnicity and make possible at the same time the collection of data to reflect the diversity of our Nation's population. Since the

Interagency Committee's recommendation concerning the reporting of more than one race was made available for public comment, the focus of attention has been largely on how the data would be tabulated. Because of the concerns expressed about tabulation methods and our own view of the importance of this issue, OMB committed to accelerate the work on tabulation issues when it testified in July 1997 on the Interagency Committee's recommendations.

A group of statistical and policy analysts drawn from the Federal agencies that generate or use these data has spent the past few months considering the tabulation issues. Although this work is still in its early stages, some preliminary guidance can be shared at this time. In general, OMB believes that, consistent with criteria for confidentiality and data quality, the tabulation procedures used by the agencies should result in the production of as much detailed information on race and ethnicity as possible.

Guidelines for tabulation ultimately must meet the needs of at least two groups within the Federal Government, with the overriding objective of providing the most accurate and informative body of data. The first group is composed of those government officials charged with carrying out constitutional and legislative mandates, such as redistricting legislatures, enforcing civil rights laws, and monitoring progress in anti-discrimination programs. (The legislative redistricting file produced by the Bureau of the Census, also known as the Public Law 94–171 file, is an example of a file meeting such legislative needs.) The second group consists of the staff of statistical agencies producing and analyzing data that are used to monitor economic and social conditions and trends.

Many of the needs of the first group can be met with an initial tabulation that provides, consistent with standards for data quality and confidentiality, the full detail of racial reporting; that is, the number of people reporting in each single race category and the number reporting each of the possible combinations of races, which would add to the total population. Depending on the judgment of users, the combinations of multiple responses could be collapsed. One method would be to provide separate totals for those reporting in the most common multiple race combinations and to collapse the data for other less frequently reported combinations. The specifics of the collapsed distributions must await the results of particular data collections. A second method would be to report the total selecting each particular race, whether alone or in combination with other races. These totals would represent upper bounds on the size of the populations who identified with each of the racial categories. In some cases, this latter method could be used for comparing data collected under the old standards with data collected under the new standards. It is important that users with the same or closely related responsibilities adopt the same tabulation method. Regardless of the method chosen for collapsing multiple race responses, the total number reporting more than one race must be made available, if confidentiality and data quality requirements can be met, in order to ensure that any changes in response patterns resulting from the new standards can be monitored over time.

Meeting the needs of the second group (those producing and analyzing statistical data to monitor economic and social conditions and trends), as well as some additional needs of the first group, may require different tabulation procedures. More research must be completed before guidelines that will meet the requirements of these users can be developed. A group of statistical and policy experts will review a number of alternative procedures and provide recommendations to OMB concerning these tabulation requirements by Spring 1998. Four of the areas in which further exploration is needed are outlined below.

- Equal employment opportunity and other anti-discrimination programs have traditionally provided the numbers of people in the population by selected characteristics, including racial categories, for business, academic, and government organizations to use in evaluating conformance with program objectives. Because of the potentially large number of categories that may result from application of the new standards, many with very small numbers, it is not clear how this need for data will be best satisfied in the future.
- The numbers of people in distinct groups based on decennial census results are used in developing sample designs and survey controls for major demographic surveys. For example, the National Health Interview Survey uses census data to increase samples for certain population groups, adjust for survey non-response, and provide weights for estimating health outcomes at the national level. The impact of having data for many small population groups with multiple racial heritages must be explored.
- Vital statistics data include birth and death rates for various population groups. Typically the numerator (number of births or deaths) is derived from administrative records, while the denominator comes from intercensal population estimates. Birth certificate data on race are likely to have been self reported by the mother. Over time, these data may become comparable to data collected under the new standards. Death certificate data, however, frequently are filled out by an observer, such as a mortician, physician, or funeral director. These data, particularly for the population with multiple racial heritages, are likely to be quite different from the information obtained when respondents report about themselves. Research to define comparable categories to be used in both numerators and denominators is needed to assure that vital statistics are as accurate and useful as possible.
- More generally, statistical indicators are often used to measure change over time. Procedures that will permit meaningful comparisons of data collected under the previous standards with those that will be collected under the new standards need to be developed.

The methodology for tabulating data on race and ethnicity must be carefully developed and coordinated among the statistical agencies and other Federal data users. Moreover, just as OMB's review and decision processes have benefited during the past four years from extensive public participation, we expect to discuss tabulation methods with data users within and outside the Federal Government. OMB expects to issue additional guidance with respect to tabulating data on race and ethnicity by Fall 1998.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity

This classification provides a minimum standard for maintaining, collecting, and presenting data on race and ethnicity for all Federal reporting purposes. The categories in this classification are social-political constructs and should not be interpreted as being scientific or anthropological in nature. They are not to be used as determinants of eligibility for participation in any Federal program. The standards have been developed to provide a common language for uniformity and comparability in the collection and use of data on race and ethnicity by Federal agencies.

The standards have five categories for data on race: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. There are two categories for data on ethnicity: "Hispanic or Latino," and "Not Hispanic or Latino."

1. Categories and Definitions

The minimum categories for data on race and ethnicity for Federal statistics, program administrative reporting, and civil rights compliance reporting are defined as follows:

American Indian or Alaska Native. A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

Asian. A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American. A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American."

Hispanic or Latino. A person of Cuban, Mexican, Puerto Rican, Cuban, South or Central American, or other Spanish culture or origin, regardless of race. The term, "Spanish origin," can be used in addition to "Hispanic or Latino."

Native Hawaiian or Other Pacific Islander. A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

White. A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Respondents shall be offered the option of selecting one or more racial designations. Recommended forms for the instruction accompanying the multiple response question are "Mark one or more" and "Select one or more."

2. Data Formats

The standards provide two formats that may be used for data on race and ethnicity. Self-reporting or self-identification using two separate questions is the preferred method for collecting data on race and ethnicity. In situations where self-reporting is not practicable or feasible, the combined format may be used.

In no case shall the provisions of the standards be construed to limit the collection of data to the categories described above. The collection of greater detail is encouraged; however, any collection that uses more detail shall be organized in such a way that the additional categories can be aggregated into these minimum categories for data on race and ethnicity.

With respect to tabulation, the procedures used by Federal agencies shall result in the production of as much detailed information on race and ethnicity as possible. However, Federal agencies shall not present data on detailed categories if doing so would compromise data quality or confidentiality standards.

a. Two-Question Format

To provide flexibility and ensure data quality, separate questions shall be used wherever feasible for reporting race and ethnicity. When race and ethnicity are collected separately, ethnicity shall be collected first. If race and ethnicity are collected separately, the minimum designations are:

Race:

—American Indian or Alaska Native
—Asian
—Black or African American
—Native Hawaiian or Other Pacific Islander
—White

Ethnicity:

—Hispanic or Latino
—Not Hispanic or Latino

When data on race and ethnicity are collected separately, provision shall be made to report the number of respondents in each racial category who are Hispanic or Latino.

When aggregate data are presented, data producers shall provide the number of respondents who marked (or selected) only one category, separately for each of the five racial categories. In addition to these numbers, data producers are strongly encouraged to provide the detailed distributions, including all possible combinations, of multiple responses to the race question. If data on multiple responses are collapsed, at a minimum the total number of respondents reporting "more than one race" shall be made available.

b. Combined Format

The combined format may be used, if necessary, for observer-collected data on race and ethnicity. Both race (including multiple responses) and ethnicity shall be collected when appropriate and feasible, although the selection of one category in the combined format is acceptable. If a combined format is used, there are six minimum categories:

—American Indian or Alaska Native
—Asian
—Black or African American
—Hispanic or Latino
—Native Hawaiian or Other Pacific Islander
—White

When aggregate data are presented, data producers shall provide the number of respondents who marked (or selected) only one category, separately for each of the six categories. In addition to these numbers, data producers are strongly encouraged to provide the detailed distributions, including all possible combinations, of multiple responses. In cases where data on multiple responses are collapsed, the total number of respondents reporting "Hispanic or Latino and one or more races" and the total number of respondents reporting "more than one race" (regardless of ethnicity) shall be provided.

3. Use of the Standards for Record Keeping and Reporting

The minimum standard categories shall be used for reporting as follows:

a. Statistical Reporting

These standards shall be used at a minimum for all federally sponsored statistical data collections that include data on race and/or ethnicity, except when the collection involves a sample of such size that the data on the smaller categories would be unreliable, or when the collection effort focuses on a specific racial or ethnic group. Any other variation will have to be specifically authorized by the Office of Management and Budget (OMB) through the information collection clearance process. In those cases where the data collection is not subject to the information collection clearance process, a direct request for a variance shall be made to OMB.

b. General Program Administrative and Grant Reporting

These standards shall be used for all Federal administrative reporting or record keeping requirements that include data on race and ethnicity. Agencies that cannot follow these standards must request a variance from OMB. Variances will be considered if the agency can demonstrate that it is not reasonable for the primary reporter to determine racial or ethnic background in terms of the specified categories, that determination of racial or ethnic background is not critical to the administration of the program in question, or that the specific program is directed to only one or a limited number of racial or ethnic groups.

c. Civil Rights and Other Compliance Reporting

These standards shall be used by all Federal agencies in either the separate or combined format for civil rights and

other compliance reporting from the public and private sectors and all levels of government. Any variation requiring less detailed data or data which cannot be aggregated into the basic categories must be specifically approved by OMB for executive agencies. More detailed reporting which can be aggregated to the basic categories may be used at the agencies' discretion.

4. Presentation of Data on Race and Ethnicity

Displays of statistical, administrative, and compliance data on race and ethnicity shall use the categories listed above. The term "nonwhite" is not acceptable for use in the presentation of Federal Government data. It shall not be used in any publication or in the text of any report.

In cases where the standard categories are considered inappropriate for presentation of data on particular programs or for particular regional areas, the sponsoring agency may use:

a. The designations "Black or African American and Other Races" or "All Other Races" as collective descriptions of minority races when the most summary distinction between the majority and minority races is appropriate;

b. The designations "White," "Black or African American," and "All Other Races" when the distinction among the majority race, the principal minority race, and other races is appropriate; or

c. The designation of a particular minority race or races, and the inclusion of "Whites" with "All Other Races" when such a collective description is appropriate.

In displaying detailed information that represents a combination of race and ethnicity, the description of the data being displayed shall clearly indicate that both bases of classification are being used.

When the primary focus of a report is on two or more specific identifiable groups in the population, one or more of which is racial or ethnic, it is acceptable to display data for each of the particular groups separately and to describe data relating to the remainder of the population by an appropriate collective description.

5. Effective Date

The provisions of these standards are effective immediately for all *new* and *revised* record keeping or reporting requirements that include racial and/or ethnic information. All *existing* record keeping or reporting requirements shall be made consistent with these standards at the time they are submitted for extension, or not later than January 1, 2003.

[FR Doc. 97–28653 Filed 10–29–97; 8:45 am]
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Thursday
October 30, 1997

Part III

Environmental Protection Agency

40 CFR Part 194

Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance With the 40 CFR Part 191 Disposal Regulations: Certification Decision; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–5915–1]

RIN 2060–AG85

Criteria for the Certification and Re-Certification of the Waste Isolation Pilot Plant's Compliance With the 40 CFR Part 191 Disposal Regulations: Certification Decision

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; opening of public comment period.

SUMMARY: The Environmental Protection Agency ("EPA") is proposing to certify that the Department of Energy's ("DOE") Waste Isolation Pilot Plant ("WIPP") will comply with the radioactive waste disposal regulations set forth at 40 CFR Part 191 (Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Waste). EPA is required to evaluate whether the WIPP will comply with EPA's standards for the disposal of radioactive waste by the WIPP Land Withdrawal Act ("LWA") of 1992, as amended. EPA's certification of compliance, if finalized, would allow the emplacement of radioactive waste in the WIPP to begin, provided that all other applicable health and safety standards have been met. The proposed certification would allow Los Alamos National Laboratory to ship TRU waste from specific waste streams for disposal at the WIPP. However, the proposed certification is subject to several conditions, notably that EPA must approve site-specific waste characterization measures and quality assurance plans before allowing other waste generator sites to ship waste for disposal at the WIPP. The Agency proposes to amend 40 CFR Part 194 by adding an appendix describing EPA's certification, and by adding a definition. Finally, EPA is proposing its decision, also pursuant to the LWA, that DOE does not need to acquire existing oil and gas leases near the WIPP in order to meet the disposal regulations. Today's notice marks the beginning of a 120-day public comment period on EPA's proposed certification decision, and on the other proposed actions described above.

DATES: Comments on today's proposal must be received by February 27, 1998. Public hearings on today's proposal will be held in New Mexico. A separate announcement will be published in the **Federal Register** to provide public hearing information.

ADDRESSES: Comments should be submitted, in duplicate, to: Docket No. A–93–02, Air Docket, Room M–1500 (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. See additional docket information in the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Betsy Forinash or Scott Monroe; telephone number (202) 233–9310; address: Radiation Protection Division, Center for the Waste Isolation Pilot Plant, Mail Code 6602-J, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. For copies of the Compliance Application Review Documents supporting today's proposal, contact Scott Monroe at the above phone number and address.

SUPPLEMENTARY INFORMATION:

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I. Background

Congress authorized development and construction of the Waste Isolation Pilot Plant ("WIPP") in 1980 "for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States."[1] The U.S. Department of Energy ("DOE" or "the Department") is developing the WIPP near Carlsbad in southeastern New Mexico as a potential deep geologic repository for the disposal of defense transuranic ("TRU") radioactive waste. TRU waste consists of materials containing alpha-emitting radioisotopes, with half-lives greater than twenty years and atomic numbers greater than 92, in concentrations greater than 100 nano-curies per gram of waste.[2] Most TRU waste proposed for disposal at the WIPP consists of items that have become contaminated as a result of activities associated with the production of nuclear weapons, e.g., rags, equipment, tools, protective gear, and organic or inorganic sludges. Some TRU waste is mixed with hazardous chemicals. Some of the waste proposed for disposal at the WIPP is currently stored on Federal lands across the United States, including locations in Colorado, Idaho, New Mexico, Nevada, Ohio, South Carolina, Tennessee, and Washington. Much of the waste proposed for disposal at the WIPP will be generated in the future as weapons are disassembled and additional facilities are decontaminated and decommissioned.

Before disposal of radioactive waste can begin at the WIPP, the U.S. Environmental Protection Agency ("EPA" or "the Agency") must certify that the WIPP facility will comply with EPA's radioactive waste disposal regulations.[3] The purpose of today's action is to propose EPA's certification decision.

II. Statutory Authority

EPA's oversight of the WIPP facility is governed by the WIPP Land Withdrawal Act ("LWA"), passed initially by Congress in 1992 and amended in 1996. The LWA delegates to EPA three main tasks, to be completed sequentially, for reaching a compliance certification decision. First, EPA must finalize general regulations which apply to all sites—except Yucca mountain—for the disposal of highly radioactive waste.[4] The regulations, located at Subparts B and C of 40 CFR Part 191 ("disposal regulations"), limit the amount of radioactive material which may escape from a disposal facility, and protect individuals and ground water resources from dangerous levels of radioactive contamination. The disposal regulations were published in the **Federal Register** in 1985 and 1993.[5]

Second, EPA must develop, by rulemaking, criteria to implement and interpret the generic radioactive waste disposal regulations specifically for the WIPP. EPA issued these "WIPP Compliance Criteria," which are found at 40 CFR Part 194, in 1996.[6] The criteria describe in detail what information DOE must submit for EPA's review, and clarify the basis on which EPA's compliance determination will be made.

Third, EPA must review information submitted by DOE and publish a certification decision.[7] Today's action constitutes EPA's proposed certification decision as required by section 8 of the LWA. On October 29, 1996, DOE submitted a compliance certification application ("CCA") containing information intended to demonstrate that WIPP will comply with the disposal regulations. Since then, DOE has submitted additional information. On May 22, 1997, EPA announced that DOE's application was deemed to be complete. (62 FR 27996–27998) EPA's evaluation of whether the WIPP will comply with the disposal regulations is made by comparing the CCA and other relevant information—including supplementary information requested by EPA from DOE, and the results of EPA's confirmatory audits and inspections—to the WIPP Compliance Criteria. The Administrator's certification of compliance depends on DOE demonstrating that it has satisfied the specific requirements of the WIPP Compliance Criteria.

III. Purpose and Scope of Today's Action

Today's action is limited primarily to the certification decision required under section 8(d) of the LWA. In addition, the proposal addresses the provision of section 4(b)(5)(B) of the LWA which requires EPA to determine whether existing oil and gas leases in the vicinity of the WIPP must be acquired by DOE. EPA has decided that it is appropriate to include this determination in this rulemaking because Congress explicitly conditioned emplacement of wastes in the repository on DOE's acquisition of the specified leaseholds, unless EPA determines that such acquisition is not required. (LWA, section 7(b)(2)) While Congress' mandate that EPA make this determination is separate and apart from the section 8(d) mandate to conduct the WIPP certification proceeding pursuant to notice-and-comment rulemaking procedures, EPA nonetheless believes it appropriate to address the leases in this rulemaking. The determination of whether potential drilling on the specified leases could possibly affect the integrity of the repository is closely related to the similar determinations that must be made under §§ 194.32(c) and 194.54(b) of the Compliance Criteria. Moreover, EPA is committed to the intent of Congress, clearly expressed in the LWA, that the public be involved in these important regulatory determinations. Therefore, by including this decision in this proposal, EPA is providing the public with the opportunity for input on this matter.

The Agency is proposing to add to the Compliance Criteria an appendix describing EPA's certification decision and to define the term "Administrator's authorized representative." Except for these additions, EPA's proposed decision regarding WIPP's compliance does not otherwise amend or affect the final disposal regulations (at Subparts B and C of 40 CFR Part 191), or the final WIPP Compliance Criteria (at Subparts A through D of 40 CFR Part 194).

Today's proposal does not address all the actions required of EPA by the LWA. For example, the proposal does not address compliance with EPA's radioactive waste management regulations—found in Subpart A of 40 CFR Part 191—which are referenced in section 9(a)(1)(A) of the LWA. Instead, the Agency has issued, in a separate action, guidance describing how EPA intends to implement Subpart A at the WIPP.[8] For copies of the WIPP Subpart

[1] Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980, Pub. L. 96–164, section 213.

[2] WIPP Land Withdrawal Act, Pub. L. 102–579, section 2(18), as amended by the 1996 WIPP LWA Amendments, Pub. L. 104–201.

[3] WIPP LWA, section 8(d).

[4] WIPP LWA, section 8(b).

[5] 50 FR 38066–38089 (September 19, 1985) and 58 FR 66398–66416 (December 20, 1993).

[6] 61 FR 5224–5245 (February 9, 1996), "Criteria for the Certification and Re-certification of the Waste Isolation Pilot Plant's Compliance with the 40 CFR Part 191 Disposal Regulations." (Certain aspects of the Compliance Criteria were challenged in the Court of Appeals for the D.C. Circuit. The Court upheld the Compliance Criteria in their entirety. *State of New Mexico v. Envt'l Protection Agency*, No. 96–1107 (D.C. Cir. June 6, 1997)).

[7] WIPP LWA, section 8(d).

[8] 62 FR 9188 (February 28, 1997), Notice of Availability for "Guidance for the Implementation of EPA's Radiation Protection Standards for

Continued

A Guidance (Document Number EPA 402–R–97–001), call the EPA WIPP Information Line at 1–800–331–WIPP, or write to Betsy Forinash, Center for the Waste Isolation Pilot Plant, Mail Code 6602–J, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Finally, today's proposal does not address requirements of the LWA which must be fulfilled by other regulatory agencies. Enforcement of some parts of the hazardous waste regulations, for example, has been delegated to the State of New Mexico. The State's authority for such actions as issuing a hazardous waste operating permit for the WIPP is in no way constrained by EPA's proposed certification decision.

IV. Limits of EPA's Regulatory Authority at the WIPP

As discussed above, the LWA conveys specific responsibilities on EPA to ensure the safety of the WIPP as a permanent disposal facility. The Agency's primary responsibility, described in section 8 of the LWA, is to determine whether the WIPP facility will comply with EPA's disposal regulations. Members of the public have expressed, in written comments and in oral testimony on the Advanced Notice of Proposed Rulemaking for today's proposal, a desire for the Agency to oversee other aspects of WIPP's operation. In response to such concerns, EPA must clarify that its authority to regulate DOE and the WIPP is limited by the LWA and other statutes which delineate EPA's authority to regulate radioactive materials in general. The limitations on EPA's authority necessarily limit the scope of the current rulemaking.

Several commenters suggested that EPA should explore alternative methods of waste disposal—such as neutralizing radioactive elements—before proceeding with a certification decision. Others stated that the WIPP should be opened immediately because underground burial of radioactive waste is less hazardous than the current strategy of above-ground storage. EPA must conduct its WIPP activities in accordance with the intent of Congress as expressed in the LWA. Congress did not delegate to EPA the authority to abandon or delay the WIPP because future technologies might evolve and eliminate the need for the WIPP. Also, Congress did not delegate to EPA the authority to weigh the competing risks of leaving radioactive waste stored above ground compared to disposal of waste in an underground repository. These considerations are outside the authority of the EPA as established in the LWA and, thus, necessarily outside the scope of this rulemaking.

Some commenters requested that EPA consider certain factors in making its certification decision. These factors include: reviews by organizations other than EPA, safety at other DOE facilities, and the political or economic motivations of interested parties. Pursuant to the LWA, EPA's certification decision must be made based on the WIPP Compliance Criteria at 40 CFR Part 194, and in accordance with requirements governing informal rulemaking proceedings. EPA is tasked only with examining the scope and quality of relevant information, and comparing such information to the objective criteria of 40 CFR Part 194. Where relevant, the Agency has considered public comments and outside reviews which support or refute technical positions taken by DOE. Emotional pleas, comments on the motives of interested parties, and the safety of sites or disposal methods other than the WIPP are factors that are not relevant to a determination of whether DOE has demonstrated compliance with the WIPP Compliance Criteria, and are therefore outside the scope of this rulemaking.

In addition, the hazards of transporting radioactive waste from storage sites to the WIPP have been of great concern to the public. EPA has received numerous public comments, oral and written, concerning the possible transport of TRU waste to the WIPP. Transportation is entirely outside EPA's general authority for regulating radioactive waste. Moreover, in the LWA, Congress did not authorize any role for EPA with respect to transportation. Congress addressed transportation issues by requiring DOE to (1) use only shipping containers approved by the Nuclear Regulatory Commission; (2) notify in advance States and Indian Tribes of the transport of TRU waste through their jurisdictions; (3) provide technical assistance and funding to ensure that jurisdictions along WIPP transportation routes receive appropriate training for accident prevention and emergency preparedness; (4) provide transportation safety assistance to States or Indian tribes through whose jurisdictions TRU waste will be transported; and (5) study transportation alternatives. (LWA, section 16) Transportation of radioactive waste is regulated by the Nuclear Regulatory Commission and the U.S. Department of Transportation. Because all transportation requirements for the WIPP are established and enforced by other regulators, EPA does not address the issue further in this proposal.

V. Public Participation

Section 8(d)(2) of the LWA requires that the Administrator's certification decision be conducted by informal (or "notice-and-comment") rulemaking pursuant to Section 553 of the Administrative Procedure Act ("APA"). Notice-and-comment rulemaking under the APA requires that an agency provide notice of a proposed rulemaking, an opportunity for the public to comment on the proposed rule, and a general statement of the basis and purpose of the final rule adopted.[9]

The WIPP is a first-of-a-kind project, and New Mexico citizens have expressed a great deal of interest in the safety of the site. The WIPP Compliance Criteria, at Subpart D of 40 CFR Part 194, established a process of public participation that exceeds the APA's basic requirements, and provides the public with the opportunity to participate in the regulatory process at the earliest opportunity. The WIPP Compliance Criteria contain provisions that require EPA to: publish an advance notice of proposed rulemaking ("ANPR") in the **Federal Register**; allow public comment on DOE's compliance certification application ("CCA") for at least 120 days, prior to proposing a certification decision; hold public hearings in New Mexico, if requested, on the CCA; provide a minimum of 120 days for public comment on EPA's proposed certification decision; hold public hearings in New Mexico on EPA's proposal; produce a document summarizing the Agency's consideration of public comments on the proposal, and maintain informational dockets in the State of New Mexico to facilitate public access to the voluminous technical record, including the CCA. EPA either has or will comply with each of these requirements.

In addition, EPA has taken other measures to assure that the public is involved in the present rulemaking. EPA allowed the New Mexico Environment Department, the New Mexico Environmental Evaluation Group, and more recently, the New Mexico Attorney General's Office as well, to observe meetings between EPA and DOE staff to discuss technical issues during the pre-proposal period. EPA also committed to summarize all meetings between EPA and DOE (including management level meetings

Management and Storage of Transuranic Waste at the Waste Isolation Pilot Plant ('WIPP Subpart A Guidance')."

[9] 5 U.S.C. 553.

and meetings between EPA and DOE legal staff) and to place such summaries in the public docket. While these commitments are not required by the APA, EPA believes that they are useful given the importance of this rulemaking to the nation as a whole, and New Mexico in particular.

A. Advance Notice of Proposed Rulemaking (ANPR)

EPA received DOE's CCA on October 29, 1996. Copies of the CCA and all the accompanying references submitted to EPA were placed in EPA's dockets in New Mexico and Washington, DC. Upon receipt of the CCA, EPA immediately began its review of the application in accordance with 40 CFR 194.11, "Completeness and accuracy of compliance applications." On November 15, 1996, the Agency published in the **Federal Register** (61 FR 58499) an ANPR announcing that the CCA had been received, and announcing the Agency's intent to conduct a rulemaking to certify whether the WIPP facility will comply with the disposal regulations. The notice also announced a 120-day public comment period, requested public comment "on all aspects of the CCA," and stated EPA's intent to hold public hearings in New Mexico.

B. Public Hearings on ANPR

The EPA published a separate notice in the **Federal Register** announcing hearings to allow the public to address all aspects of DOE's certification application. (62 FR 2988) Public hearings were held on February 19, 20 and 21, 1997, in Carlsbad, Albuquerque and Santa Fe, New Mexico, respectively. All individuals who requested an opportunity to address the EPA panel during the hearings were afforded five minutes if they were representing themselves, or ten minutes if they were representing a group. In Albuquerque and Santa Fe, EPA extended the hours of the hearings in order to accommodate all individuals who requested that they be allowed to address the panel.

C. Additional Public Input

In addition to the public hearings, EPA held three days of meetings in New Mexico, on January 21, 22 and 23, 1997, with the principal New Mexico Stakeholders, including the New Mexico Attorney General's Office, the New Mexico Environmental Evaluation Group, Concerned Citizens for Nuclear Safety, Citizens for Alternatives to Radioactive Dumping, and Southwest Research and Information Center. Detailed summaries of these meetings were placed in Docket A–93–02, Category II–E.

D. Public Comments on ANPR

The Agency received over 220 sets of written and oral public comments in response to the ANPR. All comments received on the ANPR were made available to members of the public through the public docket. (Docket A–93–02, Category II–H) In accordance with 40 CFR 194.61(f), DOE submitted to the Agency additional information specifically addressing many of the comments received; these submittals were treated by EPA as public comments.

The Agency reviewed all public comments submitted during the ANPR 120-day comment period or presented at the preliminary meetings with stakeholders. Public comments received in response to the ANPR generally focused on the completeness of the CCA, specific technical issues relating to compliance with the disposal regulations, and EPA's approach to public participation in accordance with the provisions of the WIPP Compliance Criteria, and pursuant to the LWA and the APA.

The EPA is providing responses to these comments in this preamble as well as in the compliance application review documents ("CARDs") which are part of today's proposed certification decision. The CARDs also address late comments—and comments on completeness (see below)—received after the close of the public comment period (on March 17, 1997) but before August 8, 1997. All relevant public comments, whether received in writing, or orally during the public hearings, were considered by the Agency as the proposed certification decision was developed. Comments received after August 8 were considered by EPA, to the extent possible, in its development of the proposed rule, but were not addressed in CARDs because of time constraints. Such comments will be addressed in the Response to Comments document for EPA's final certification decision.

E. Completeness Determination

Section 8(d)(1)(B) of the LWA establishes a one-year time frame for the Administrator to reach a certification decision regarding WIPP's compliance with the disposal regulations. Section 8(d)(4) of the LWA requires that EPA make its certification determination only after DOE has submitted the "full application" to EPA. The Compliance Criteria, at § 194.11, interpret these requirements to mean one year from receipt of a "complete" certification application from DOE. This assures that the one-year review period is devoted exclusively to substantive, meaningful review of the CCA.

Upon receipt of the CCA in October 1996, EPA began reviewing the CCA for both completeness and, to the extent possible, technical adequacy. Pursuant to section 8(d)(1) of the LWA, EPA provided requests to DOE for specific information needed for completeness on December 19, 1996. (Docket A–93–02, Item II–I–1, Attachment 1) DOE submitted the requested information with letters dated January 17, January 24, February 7, February 14, and February 26, 1997. (This correspondence is available in Docket A–93–02, Category II–I.) On May 16, 1997, the Administrator informed the Secretary, in writing, that the CCA was complete. The completeness determination was announced in the **Federal Register** on May 22, 1997. (62 FR 27996–27998)

The determination of completeness meant only that all sections of the disposal regulations and Compliance Criteria had been addressed in the CCA. The completeness determination did not state or imply that compliance with the disposal regulations or WIPP Compliance Criteria had been achieved. In short, the completeness determination was an interim administrative step to announce that the CCA contained the information necessary for the Agency to proceed with its technical evaluation of compliance.

Moreover, section 8(d)(1) of the LWA specifically allows EPA to request additional information "as needed to certify" at any time. EPA made such additional requests in letters to DOE dated December 19, 1996, and February 18, March 19, April 17, April 25, June 6, and July 2, 1997. (Docket A–93–02, Items II–I–1, II–I–9, II–I–17, II–I–25, II–I–27, II–I–32, and II–I–37, respectively)

F. Public Comments on Completeness

The Agency received numerous public comments regarding the timing of the Administrator's completeness determination. While some comments stated that the CCA was administratively complete upon submission, others argued that the CCA was incomplete and simply should be returned to DOE. The latter set of commenters expressed that it was not appropriate for the Agency to close the public comment period on the ANPR prior to the Administrator's determination of completeness, and that the public hearings should be delayed until after the completeness determination. Other commenters

requested an additional 120-day comment period after the completeness determination was issued, as well as an additional set of public hearings during such a comment period.

In making its completeness determination, EPA considered public comments which explicitly addressed the issue of completeness and were submitted to the docket or to EPA's Office of Radiation and Indoor Air. In response to concerns expressed by commenters, the Agency notified the public in the **Federal Register** announcement regarding the completeness determination that EPA would continue to accept public comments on the CCA subsequent to the completeness determination. (62 FR 27997) (Comments on completeness received before August 8, 1997, are addressed in more detail in the CARDs supporting this proposal. Comments received after August 8 will be addressed in the Response to Comments document for EPA's final certification rule.) In accordance with § 194.62, the public is being afforded a 120-day period in which to comment on today's proposal. This comment period will provide the public with another opportunity to comment on DOE's CCA, as well as an opportunity to address EPA's proposed certification decision.

Public comments received during and after the ANPR comment period also requested that EPA clarify what specific material constitutes the "complete" CCA. This concern was raised because, at EPA's request, DOE supplemented the docket with substantial additional materials beyond what was initially submitted on October 29, 1996. Many of the issues raised by public comments were addressed in a December 19, 1996 letter to DOE in which EPA identified additional information necessary for the CCA to constitute a complete application. (Docket A–93–02, Item II–I–1, Attachment 1) To address completeness concerns, EPA requested additional information on (among other topics) site conditions, documentation of computer codes, and the effects of explosions—issues all identified in public comments. DOE submitted the requested information with letters dated January 17, January 24, February 7, February 14, and February 26, 1997. The complete CCA consists of the application that was submitted to EPA on October 29, 1996, and supplementary materials provided by DOE that were identified by EPA, in the December 19 letter, as necessary for completeness. A list of the specific items that comprise the complete application is located in Docket A–93–02, Item II–G–29. All correspondence between DOE and EPA regarding completeness of the CCA is available in the Agency's public dockets. (Docket A–93–02, Category II–I)

Other issues raised by commenters, such as fluid injection scenarios, were not considered relevant to the completeness determination and instead were addressed by EPA in its technical comments to DOE.

G. Proposed Certification Decision

Today's Notice of Proposed Rulemaking for certification fulfills the requirements of the WIPP Compliance Criteria at § 194.62. Today's notice announces the Administrator's proposed decision, pursuant to section 8(d)(1) of the LWA, as amended, to issue a certification that the WIPP facility will comply with the disposal regulations, and solicits comment on the proposal. Today's notice also marks the beginning of a 120-day public comment period on EPA's proposed certification decision. Finally, today's notice announces that public hearings will be held in New Mexico during the public comment period. Further information on the hearings will be provided in a subsequent **Federal Register** notice. Any comments received on today's notice will be made available for inspection in Docket A–93–02, Category IV–D.

H. Final Certification Decision

The Agency will publish a final rule in the **Federal Register** announcing the Administrator's final decision, pursuant to section 8(d)(1) of the LWA and in accordance with the Compliance Criteria at 40 CFR 194.63, whether to issue a certification that the WIPP facility will comply with the disposal regulations. EPA will review comments submitted on EPA's proposed decision. (Comments regarding the ANPR and completeness that are addressed in the CARDs for the proposed rule have already been considered and will not be addressed again in the Response to Comments document for the final rule.) A document summarizing significant comments and issues arising from comments received on today's Notice of Proposed Rulemaking, as well as the Administrator's response to such significant comments and issues, will be prepared and will be made available for inspection in Docket A–93–02.

I. Dockets

In accordance with 40 CFR 194.67, EPA maintains a public docket (Docket A–93–02) that will contain all information used to support the Administrator's proposed and final decisions on certification. The Agency established and maintains the formal rulemaking docket in Washington, D.C., as well as informational dockets in three locations in the State of New Mexico (Carlsbad, Albuquerque, and Santa Fe). The docket consists of all relevant, significant information received to date from outside parties and all significant information considered by the Administrator in reaching a proposed certification decision regarding whether the WIPP facility will comply with the disposal regulations. Copies of the CCA were placed in Category II–G of the docket. Supplementary information received from DOE in response to EPA requests was placed in Categories II–I and II–G.

The hours and locations of EPA's public information dockets are as follows: Docket No. A–93–02, located in room 1500 (first floor in Waterside Mall near the Washington Information Center), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460 (open from 8:00 a.m. to 4:00 p.m. on weekdays); (2) EPA's docket in the Government Publications Department of the Zimmerman Library of the University of New Mexico located in Albuquerque, New Mexico, (open from 8:00 a.m. to 9:00 p.m. on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); (3) EPA's docket in the Fogelson Library of the College of Santa Fe in Santa Fe, New Mexico, located at 1600 St. Michaels Drive (open from 8:00 a.m. to 12:00 midnight on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, 1:00 p.m. to 9:00 p.m. on Sunday); and (4) EPA's docket in the Municipal Library of Carlsbad, New Mexico, located at 101 S. Halegueno (open from 10:00 a.m. to 9:00 p.m. on Monday through Thursday, 10:00 a.m. to 6:00 p.m. on Friday and Saturday, and 1:00 p.m. to 5:00 p.m. on Sunday). As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying docket materials.

VI. National Academy of Sciences Report on the WIPP

The National Academy of Sciences ("NAS") has long considered the issue of proper disposal of radioactive wastes. The NAS first discussed the likely suitability of salt formations as a medium for geologic disposal of high-level radioactive wastes in 1957.[10] A later study recommended the use of

[10] National Research Council (NRC), "The Disposal of Radioactive Wastes on Land" (National Academy Press 1957).

bedded salt formations for geologic disposal.[11]

The NAS has provided specific scientific and technical guidance to DOE regarding the WIPP since the inception of the NAS WIPP Committee in 1978. In October 1996, the NAS released a report assessing the long-term safety and performance of the WIPP disposal system. The report is available in Docket A–93–02, Item II-A–38. The WIPP committee's schedule did not allow for review of the CCA submitted to EPA in October 1996; instead, the committee examined a preliminary performance assessment ("PA") conducted in 1992, and draft versions of DOE's CCA. For this reason and others, the NAS noted that the report was "a review of ongoing activities and should be viewed as a progress report rather than a final evaluation."[12]

The report reiterates NAS belief that salt is an attractive medium for geologic isolation of radioactive waste. Based on its review of the 1992 PA, the committee found no credible or probable scenario for release of radionuclides from the WIPP if it is undisturbed by human intrusion. The report concluded that disturbed scenarios—i.e., those involving deliberate or unintentional human intrusion—could compromise the integrity of the disposal system. Finally, the committee recommended several changes intended to produce a more technically defensible and more easily understood PA.

EPA considered the NAS report in developing its proposed certification decision. Specific recommendations on alternative modeling approaches or other improvements to the 1992 PA were considered by EPA in evaluating whether the CCA is adequate. The Agency treated such recommendations as public comments on the ANPR, and responds in detail to particular issues in the CARDs supporting today's proposal. EPA did not give substantial consideration to the committee's general conclusions on the PA because, subsequent to the NAS review, EPA required numerous changes to the preliminary PA considered by the committee. The committee recommended that human intrusion scenarios could be made less speculative by refining probability estimates for the occurrence of future human activities, but suggested neither a methodology for doing so, nor an alternative approach to human intrusion which could be implemented within the framework of the Compliance Criteria.[13]

VII. Codification of EPA's Certification Decision

The requirements which apply to the rulemaking process used to develop EPA's certification decision (including measures for soliciting and considering public input) do not prescribe what form the final decision must take. In analogous situations where EPA issues or denies hazardous waste no-migration petitions for landfills or other sites, public notice of the decision is provided by publication in the **Federal Register**, and such notice serves as the record of EPA's action.[14] Because of the one-of-a-kind nature of the WIPP facility, EPA has determined that it is appropriate to provide a more permanent record of the Agency's decision. To that end, EPA's decision is being published in the **Federal Register** and also will be codified as an appendix to the WIPP Compliance Criteria at 40 CFR Part 194. A lasting record of EPA's certification decision will be established since the appendix will be included each time in the future that the Code of Federal Regulations is compiled and published.

VIII. Determination of Whether the WIPP Complies With the Disposal Regulations

The proposed rule states the Agency's determination that the WIPP will comply with the disposal standards and Compliance Criteria, taken as a whole. In addition, the proposal specifies all conditions which apply to the certification. As noted previously, EPA's certification of compliance depends on DOE satisfying the specific requirements of the WIPP Compliance Criteria. The ensuing sections of the **SUPPLEMENTARY INFORMATION** address each of the technical WIPP Compliance Criteria in turn; the Agency describes the basis for evaluating compliance with each criterion, and discusses briefly how the CCA submitted by DOE, and other relevant information, demonstrated compliance with EPA's requirements. CARDs provide more detailed support for EPA's proposed decisions regarding compliance with individual criteria. The CARDs are available for public review in Docket A-93–02, Category III-B. See "additional docket information" in the **SUPPLEMENTARY INFORMATION**.

Not all sections of the WIPP Compliance Criteria are discussed below because not all the provisions of 40 CFR Part 194 are directly relevant to an evaluation of compliance with the disposal regulations. Some sections of 40 CFR Part 194—such as § 194.1, "Purpose, scope and applicability"—are entirely administrative in nature. Other sections, including those related to public participation, address procedural aspects of the certification rulemaking. Still others refer to future actions which may occur, such as inspections or the need to suspend an existing certification. Such criteria are not relevant to EPA's analysis of whether information in the CCA and elsewhere demonstrates that the WIPP site will comply with EPA's disposal regulations. Some of these criteria are addressed elsewhere in the **SUPPLEMENTARY INFORMATION**. For example, EPA's adherence to the public participation requirements of the LWA and 40 CFR Part 194 is documented under "public participation."

A. Basis for EPA's Compliance Determination

EPA's proposed certification decision is based on the entire record available to the agency, which is contained in Docket A-93–02. The record consists of the complete DOE CCA, supplementary information submitted by DOE in response to EPA requests for additional information for technical sufficiency, technical reports generated by EPA and EPA contractors, EPA audit reports, and public comments submitted on EPA's ANPR for the certification decision.

Thus, as contemplated by Congress, EPA's compliance determination is based on more than the "complete" application. (LWA, section 8(d)(1)) EPA also relied on materials prepared by the Agency or submitted by DOE in response to EPA requests for specific additional information necessary to address technical sufficiency concerns. Examples of such documents include EPA technical and audit reports and letters submitted by DOE (i.e., those contained in Docket A–93–02, Category II–I).

In response to public comments regarding the precise materials EPA considered in reaching today's proposed decision, the CARDs reference the

[11] NRC, "Disposal of Solid Radioactive Wastes in Bedded Salt Deposits" (National Academy Press 1970).

[12] NRC, "The Waste Isolation Pilot Plant: A Potential Solution for the Disposal of Radioactive Waste" (National Academy Press 1996), p. 12.

[13] NAS never submitted official comments on proposed 40 CFR Part 194. In contexts other than the WIPP report, however, NAS has acknowledged the impossibility of making decisions regarding nuclear waste disposal based solely on scientific information: "[I]t became clear in the course of our work that designing the standards requires making decisions based as much or more on policy considerations than on science. It is equally clear that there is no sharp dividing line between science and policy." [NRC, *Technical Bases for Yucca Mountain Standards* (National Academy Press, 1995), p. viii] The rulemaking process used to develop the WIPP compliance criteria provided a forum for EPA to gather and weigh scientific evidence, public concerns, and other policy issues regarding the treatment of human intrusion in PA.

[14] *See, e.g.*, the RCRA Conditional No-Migration Petition, 55 FR 47709.

relevant portion(s) of the October 29, 1996, CCA and any supplementary information that was relied on in reaching a particular proposed compliance decision. All materials which informed EPA's proposed decision have been placed in the WIPP dockets or are otherwise publicly available. EPA has specified in the docket the location of all reference materials to aid the public in its evaluation of such information. A full description of the supporting documentation for EPA's proposed decision and a full list of the DOE compliance documentation considered by the Agency are located at Docket A–93–02, Item III–B–1. Through these means, the Agency believes the public will have a clear indication of what materials constitute the complete CCA, and what materials constitute the record basis for EPA's proposed certification decision.

B. Compliance Application Review Documents (CARDs)

The preamble for today's proposed rule describes the basis for the Agency's compliance determination for each of the relevant WIPP Compliance Criteria. The detailed technical rationale for EPA's proposed decision is contained in the Compliance Application Review Documents (CARDs) supporting today's action. Taken as a whole, the CARDs are analogous to the Background Information Document usually provided for EPA rulemakings. These documents are found at Docket A–93–02, Item III–B–2.

The CARDs discuss DOE's compliance with the individual requirements of the WIPP Compliance Criteria. Each CARD is a section in the document which is numbered according to the section of 40 CFR Part 194 to which it pertains. For example, CARD 23 addresses § 194.23, "Models and Computer Codes." In the section of each CARD called "Compliance Review Criteria," EPA restates the specific requirement and identifies the relevant information expected in the CCA, as described in the "Compliance Application Guidance for the WIPP: A Companion Guide to 40 CFR Part 194" ("CAG," EPA 402–B–95–014, March 1996). EPA also clarifies the Agency's rationale for evaluating the CCA's completeness and technical adequacy.

After explaining the Agency's compliance review criteria, each CARD summarizes DOE's approach to compliance and describes EPA's compliance review. CARDs also list additional EPA technical support documents and any other references used by EPA in rendering a proposed decision on compliance. All technical support documents and references are found in Docket A–93–02 with the exception of generally available references and those documents already maintained by DOE or its contractors in locations accessible to the public. DOE has committed to make such documents readily available to the public. Instructions for obtaining access to DOE documents can be found at Docket A–93–02, Item III–B–1.

Finally, CARDs contain EPA's response to comments received on the Agency's ANPR of November 15, 1996 (61 FR 58499) and on other comments received prior to August 8, 1997. For more discussion of EPA's response to these comments, see "Public Participation" in the **SUPPLEMENTARY INFORMATION**.

For technical information or more detailed discussion on EPA's evaluation of compliance with any individual provision of 40 CFR Part 194, readers should refer to the corresponding CARD in Docket A–93–02, Item III–B–2.

IX. Section 194.14, Content of Compliance Certification Application

40 CFR Part 194 sets out those elements which the Agency requires to be in a complete compliance application. In general, compliance applications must include information relevant to demonstrating compliance with each of the individual sections of 40 CFR Part 194 to determine if the WIPP will comply with the Agency's radioactive waste disposal regulations at 40 CFR Part 191, Subparts B and C. The Agency published the "Compliance Application Guidance for the Waste Isolation Pilot Plant: A Companion Guide to 40 CFR Part 194" ("CAG") which provided detailed guidance on the submission of a complete compliance application.

Any compliance application must include, at a minimum, basic information about the WIPP site and disposal system design, and must also address all the provisions of the Compliance Criteria; these requirements are embodied in § 194.14. The documentation required in the Compliance Criteria is important to enable a rigorous, thorough assessment of whether the WIPP facility will comply with the disposal regulations.

Much of the information referenced by DOE as demonstrating compliance with § 194.14, and EPA's review of the information, was principally used to demonstrate compliance with other sections of the Compliance Criteria. Thus, this section of the preamble discusses many of the requirements of § 194.14 only briefly because they are fully discussed in other sections of the preamble. EPA thoroughly reviewed DOE's compliance certification application ("CCA") submitted on October 29, 1996, and additional information submitted by DOE.

A. Site Characterization

40 CFR 194.14(a) requires DOE to describe the characteristics of the WIPP site, including the natural and engineered features that may affect the performance of the disposal system. The characteristics of the site and identification of potential pathways are crucial to the conceptual models and computer modeling that is done to determine compliance with the containment requirements at 40 CFR 191.13 and the individual and groundwater protection requirements. In addition to a general understanding of the site, EPA required specific information on hydrologic characteristics with emphasis on brine pockets, anhydrite interbeds, and potential pathways for transport of waste. EPA also required DOE to project how geophysical, hydrogeologic and geochemical conditions of the disposal system would change due to the presence of waste.

EPA examined the CCA and determined that it and the supplemental information provided by DOE contained an adequate description of the WIPP geology, geophysics, hydrogeology, hydrology and geochemistry of the WIPP disposal system and its vicinity, and how these conditions change over time. The CCA discussed that very few potential pathways exist for radionuclide transport. DOE projected future geophysical, hydrogeologic and geochemical conditions due to the presence of waste. A brief overview of the site is provided below.

The WIPP is located in the Delaware Basin of New Mexico and Texas and is approximately 26 miles southeast of Carlsbad, New Mexico. This area of New Mexico is currently arid, but precipitation increases were accounted for in the performance assessment ("PA"). The Delaware Basin contains thick sedimentary deposits (over 15,000 feet (4572 meters) thick) that overlay metamorphic and igneous rock (1.1 to 1.5 billion years old). The WIPP repository is a mine constructed approximately 2,150 feet (655 meters) below ground surface in the Permian age (~200–250 million years old) Salado Formation, which is composed primarily of salt (halite).

DOE considered the primary geologic units of concern to be (from below the repository to the surface): (1) Castile Formation ("Castile"), consisting of

anhydrite and halite with pressurized brine pockets found locally throughout the vicinity of the WIPP site; (2) Salado Formation ("Salado"), consisting primarily of halite with some anhydrite interbeds and accessory minerals and approximately 2,000 feet (600 meters) thick; (3) Rustler Formation ("Rustler"), containing salt, anhydrite, clastics, and carbonates (primarily dolomite), with the Culebra dolomite member of the Rustler as the unit of most interest; and, (4) Dewey Lake Red Beds Formation ("Dewey Lake"), consisting of sandstone, siltstone and silty claystone. The geologic formations below these were included in the screening of features, events, and processes, but were not included in PA calculations because they did not affect the performance of the disposal system. See § 194.32 for a detailed discussion of screening of features, events, and processes.

DOE indicated that the major geologic process in the vicinity of the WIPP is dissolution. To the west, the slight (one degree) dip in the Salado has exposed the formation to dissolution processes, and commenters argued that lateral dissolution processes will affect the WIPP's ability to contain radionuclides. However, DOE estimated that the dissolution front will not reach the WIPP site for at least hundreds of thousands of years—well past the regulatory time frame. EPA agrees with DOE's conclusion that while deep dissolution has occurred elsewhere in the Delaware Basin, the process of deep dissolution, if it occurs under the WIPP site, would occur at such a slow rate that it would not affect the containment capabilities of the WIPP during the regulatory time period.

Many commenters suggested that WIPP can not contain radionuclides because WIPP is in a region of karst (topography created by the dissolution of rock). EPA reviewed information submitted by DOE and stakeholders regarding the occurrence and development of karst at the WIPP (e.g., Docket A–93–02, Items II–H–46 and II–D–102). EPA concluded that while the WIPP site is in a karst region and karst features are found to the west of the site in Nash Draw, only limited evidence exists that dissolution-related features occur near the WIPP boundary (e.g., well WIPP–33). These features are neither pervasive nor associated with any identified preferential groundwater flow paths or anomalies. WIPP field mapping and site-specific hydrologic information (e.g., well tracer tests) do not indicate that any cavernous or other karst-related flow is present at the WIPP site. As stated in a technical document submitted by one commenter, "the karst phenomena do not appear to warrant a rejection of the WIPP site." (Docket A–93–02, Item II–D–102) EPA agrees and concludes that karst is not a problem at WIPP and that geologic evidence of the last approximately 500,000 years and results from DOE's groundwater modeling indicate that future development of karst at the WIPP is not likely.

DOE conducted geologic studies and field measurements as part of its evaluation of the hydrology of the WIPP site and identified two potential pathways for radionuclides in the disposal system: the Culebra dolomite and Salado anhydrite markerbeds 138 and 139. However, only the Culebra dolomite has the capability to transmit significant amounts of radionuclides. The Salado markerbeds have very low permeability and are the primary pathways in the undisturbed case. The results of the CCA PA indicated that radionuclide transport through the anhydrites does not contribute significantly to total releases. The Culebra dolomite is a potential pathway only in intrusion scenarios. Commenters stated that the Dewey Lake should be considered a potential pathway and thus needed better characterization; however, the CCA PA results indicated that no contaminated brine traveled up an intrusion borehole past the Culebra to the Dewey Lake or other units. While DOE did identify the Dewey Lake as a potential underground source of drinking water, the CCA PA results indicated that the Dewey Lake did not play an active role in radionuclide release scenarios. EPA concludes that the Culebra dolomite and the Salado anhydrite markerbeds 138 and 139 are the only ground-water radionuclide transport pathways in the disposal system.

As the primary radionuclide pathway during an intrusion, the Culebra was the subject of many public comments, especially related to karst (discussed above), K_d values (distribution coefficients used in calculating the retardation factor) and geochemistry and flow directions. In DOE's conceptual model the Culebra is characterized as a fractured dolomite that has dual-porosity and acts to physically retard movement of contaminants. In a dual-porosity rock unit, ground-water is believed to flow through the fractures, but water and contaminants can access the pore space within the rock matrix away from the fractures. Movement of water and contaminants into the pore space slows (retards) their respective forward movement. This physical retardation is necessary in order to have chemical retardation. In the process of chemical retardation, contaminants diffuse from the fractures into the pore space where they can adsorb onto the rock mass.

The CCA indicated that there were no contributions to total releases from the ground-water pathway. This was due, in large part, to the fact that radionuclides adsorbed into the Culebra dolomite did not move with the ground-water flow. That is, the movement of the radionuclides were retarded with respect to the ground-water flow. The estimate of the extent of the retardation was based on laboratory tests using crushed rocks and small columns of rock. EPA concluded that the laboratory tests were conducted appropriately and that the K_d values DOE derived from this testing are reasonable given the experimental evidence. However, EPA believes that a lognormal distribution is a more appropriate representation of the data distribution, and required the use of a lognormal distribution in the Performance Assessment Verification Test (PAVT). For further discussion of the PAVT, refer to the preamble for § 194.34.

DOE indicated in the CCA that there is considerable variation in the groundwater chemistry of the Culebra member of the Rustler Formation. In addition, DOE provided supplemental information pertaining to Culebra groundwater flow and geochemistry which contended that the observed geochemistry and flow directions can be explained with the ground-water basin modeling. (Docket A–93–02, Item II–I–17) The ground-water basin model addressed near surface hydrologic conditions (including the water table and potential recharge areas) and reconciled inconsistencies between the geochemistry data and the current ground-water flow direction.

The probability of intercepting a Castile brine reservoir (i.e., brine pocket) and the characteristics of a brine reservoir once it has been hit were the subject of many public comments as well as a source of EPA concern. Because of the low permeability of the Salado Formation, there is no natural connection between a Castile brine pocket and the waste panel area. However, in the case of a deep drilling intrusion that goes through a waste panel and into the Castile, it is possible that the drilling will intercept brine in the Castile and create a pathway for Castile brine to flow into the repository and interact with the waste.

In the 1992 PA, Sandia National Laboratory ("SNL") considered the probability of hitting a brine pocket under the waste area an uncertain parameter that required sampling over a

range of 0.25 to 0.62. This range of probabilities was based on geophysical work that suggested brine may be present. For the CCA PA, SNL conducted a new analysis based on a geostatistical analysis of oil and gas wells in the vicinity of WIPP. From this study, SNL identified the probability of hitting brine as 0.08, partly because the brine is expected to be in fractures that are oriented vertically or slightly less than vertical. EPA reviewed the CCA and public comments and concluded that, while the probability of hitting a brine pocket may be low, there was no justification for assuming a fixed value for such an uncertain parameter. EPA therefore directed DOE, for the PAVT, to change the probability of hitting a brine pocket to a range that incorporated low to moderate probabilities (0.01 to 0.6).

The potential volume of brine reservoirs was also the subject of numerous comments claiming that, in the PA, DOE underestimated the brine volume. DOE assumed that passive institutional controls ("PICs") will limit the available brine pocket volume to that within the area covered by the surface berm used to mark the subsurface location of the waste panels. EPA reviewed information in the CCA, public comments, and the SNL Records Center. EPA concluded that the approach of excluding Castile brine pocket volumes based on the waste panel "foot print" is inappropriate because the efficacy of drilling in the area outside the berm cannot be reasonably defined. EPA directed DOE, for the PAVT, to change the brine pocket volume to a volume that is more representative of data from site characterization activities (i.e., the WIPP–12 exploratory well). The PAVT also omits the credit for PICs.

The results of the PAVT indicated that changing the probability of hitting a brine pocket has a negligible effect on releases, but changing the brine volume from 160,000 cubic meters to 17 million cubic meters does have a noticeable effect on releases for the scenarios in which a brine pocket is hit. Nevertheless, the PAVT results indicated that, even with these changes combined with other parameter changes, the PAVT results are similar to those in the CCA and still meet the containment requirements by more than one order of magnitude. EPA believes that the PAVT verifies that the original CCA Castile brine reservoir parameters were adequate for use in PA and comparison against the radioactive waste containment requirements. See the preamble for § 194.34(f) for additional information on the results of the PAVT.

EPA agrees with DOE's conclusion in the CCA that the most important extractable resources near the WIPP are hydrocarbons, potassium salts (potash), and water. DOE indicated that some of the geologic formations below the repository area contain oil and gas resources that are currently being exploited in the Delaware Basin. According to DOE's analysis, most of the water in the vicinity of the WIPP is highly saline, with the closest dependable potable aquifer associated with the Capitan Reef at the edge of the Basin. With respect to potash, the CCA indicated that only the 4th and 10th potash zones qualify as economic reserves. Commenters noted that the extent of potash identified by DOE is different than that identified by the Bureau of Land Management in its map of resources. EPA concludes that DOE's presentation is reasonable, given the 40 CFR Part 194 requirements that DOE assess resources relative to those currently being mined.

The projected effect of waste on the disposal system are primarily limited to gas generation that increases repository pressure and actinide solubility. Gas will be generated: (1) By corrosion of metals and (2) as a byproduct of microbial degradation of cellulosics, plastics and rubbers. Gas generation primarily affects spallings (due to high pressures) and direct brine releases (due to high pressures and increasing solubility). DOE indicated that magnesium oxide ("MgO") backfill emplaced with transuranic waste would mitigate the solubility-enhancing effects of carbon dioxide from waste degradation. EPA concurs with DOE's assessment. Refer to § 194.44 for further discussion of the effects of MgO.

Although commenters questioned DOE's characterization of the WIPP site, especially the hydrology, EPA concluded after extensive review that DOE identified, characterized, and used in the calculations the major components of the geologic and hydrologic system around the WIPP. DOE provided a detailed discussion of the geology and identified the few geologic units that are important to PA. DOE also identified that very few geologic units could transmit fluids and transport radionuclides; after an intrusion, only the Culebra dolomite is a significant pathway above the Salado with other overlying units not receiving any contaminated brine. EPA reviewed DOE's discussion on dissolution and karst and concludes that these processes are not currently significant and will not affect WIPP over the regulatory time period. EPA disagreed with DOE's characterizations of the Castile brine pocket and required changes for the PAVT; however, PAVT results verified that the original parameters were acceptable for use in the PA.

B. Disposal System Design

Section 194.14(b) requires DOE to describe the design of the disposal system, including natural and man-made materials, and architectural and structural aspects of the disposal system. DOE also must describe the computer codes and standards that have been applied to the design and construction of WIPP.

The CCA contained a general description of the WIPP facility and a detailed description of the underground disposal system (including the engineered barriers in the repository and shaft system as well as the geologic units). The WIPP repository is an underground mine that will eventually have eight panels (each of which will include seven football-field long rooms) connected by drifts. Waste will be emplaced in the WIPP through the waste shaft. An exhaust shaft, salt handling shaft, and air intake shaft also penetrate the WIPP repository. The underground mine is attended by surface equipment and buildings that will handle waste prior to its emplacement in the WIPP. DOE intends to pack bags of magnesium oxide ("MgO") around the waste containers, and will seal each panel after it is filled with waste. The Salado salt will eventually "creep" and close WIPP rooms and panels. The WIPP was designed to take advantage of this encapsulation so that transuranic waste emplaced in the WIPP will be completely enveloped by salt, thus minimizing the potential for waste migration.

The major disposal system engineered features related to long-term performance are the general design, shaft seals, panel closures, borehole plugs, and the additional engineered barrier of backfill around the waste. The purpose of the shaft seal system is to limit fluid flow within the shafts after the WIPP is decommissioned and to ensure that the disposal system shafts will not become pathways for radionuclide release. The shaft seal system has 13 elements that fill the shaft with engineered materials possessing high density and low permeability, including concrete, clay, compacted salt, cementitious grout, and earthen fill. DOE identified the compacted salt column as the most critical element in the long-term performance of the shaft seal. The compacted salt column component of the system within the Salado is intended to serve as the

primary long-term barrier by limiting fluid transport along the shaft during the 10,000-year regulatory period. The other components of the shaft seal within the Salado are intended to prevent migration of radionuclides in the short term and protect the compacted salt column until it is sufficiently consolidated to act as an effective long-term barrier. Components of the seal system within the Rustler are intended to limit the commingling of groundwater between the water bearing members. The seal system overlying the Rustler will consist of compacted earthen fill. The shaft seal design in the CCA received extensive technical review by DOE, and was also subjected to an independent design review. EPA concludes that the shaft seal design is adequate because the system can be built and is expected to function as intended.

The purpose of borehole plugs is to mitigate the potential for migration of contaminants toward the accessible environment. DOE indicated that it will abide by the applicable State oil and gas well plugging requirements. While there are four deep research wells drilled in the disposal system, DOE stated that "the ERDA–9 exploratory hole was the only hole within the underground development area which was permitted to penetrate the Salado formation to the underground facility horizon." ERDA–9 did not penetrate an area that will become a waste panel and DOE has indicated that abandoned boreholes more than a meter away from the waste can be screened out of PA due to low consequence. EPA agrees with DOE's assessment that these boreholes are not significant to performance of the disposal system and can be screened out of PA.

The primary long-term effect of the panel closure will be to block the flow of brine between panels. DOE provided four design options for panel closures but did not specify in the CCA which panel closure option would be used at WIPP, an omission that was pointed out in public comments. (Docket A–93–02, Item II–H–10) In reviewing the four panel closure design options, EPA identified Option D in the CCA as the most robust design, and reviewed that design as the basis for an evaluation of compliance. EPA found that the design for Option D would be expected to perform as described, but that the use of a Salado mass concrete (consistent with the type specified for the shaft seal system) rather than fresh water concrete would be more consistent with the permeability assumptions used in PA. EPA determined that such a design is adequate to achieve the long-term performance modeled in PA, and therefore proposes to find that DOE complies with § 194.14(b). However, because EPA is basing its proposed compliance determination on the Option D panel seal design, the EPA is also proposing to establish a certification condition requiring DOE to implement the Option D design, with Salado mass concrete replacing fresh water concrete. (See Condition 1 in the proposed Appendix A to 40 CFR Part 194.) Although EPA's sensitivity analysis indicates that the panel closure permeability is not a sensitive parameter, especially with the disturbed rock zone at the same or higher permeability, the Agency believes it is important to ensure that the proposed design on which compliance was based is actually implemented at the site. Because of the presence of the disturbed rock zone, EPA expects that gas flow between panels for long-term performance purposes would be relatively unaffected by the design choice.

C. Results of Assessments

Section 194.14(c) requires the CCA to present the results of assessments of the WIPP's performance, given human intrusion into the disposal system (performance assessment) and undisturbed conditions (compliance assessment). EPA determined that DOE's results showed compliance with the containment (§ 191.13), individual (§ 191.15), and ground water (40 CFR Part 191, Subpart C) requirements of the disposal regulations. Refer to discussions of § 194.34 and § 194.55 for EPA's full evaluation of results of assessments. Based on EPA's finding that information submitted by DOE was sufficient for compliance with §§ 194.34 and 194.55, the Agency proposes to find that DOE also complies with § 194.14(c).

D. Input Parameters to Performance Assessments

40 CFR 194.14(d) requires DOE to describe the input parameters to the PA and discuss the basis for their selection. DOE provided descriptions of input parameters to the PA. EPA's evaluation of this information is addressed in the discussion of § 194.23 of this preamble. Based on EPA's finding that information was sufficient for compliance with § 194.23, the Agency proposes to find that DOE also complies with § 194.14(d).

E. Assurance Requirements

Section 194.14(e) requires documentation of measures taken to meet the assurance requirements. EPA considers DOE to have complied with § 194.14(e) if it provided the information required for §§ 194.41 through 194.46. Based on EPA's determination of compliance for all six assurance requirements (active institutional controls, monitoring, passive institutional control, engineered barriers, consideration of the presence of resources, and removal of waste), EPA proposes to find that DOE also complies with § 194.14(e).

F. Waste Acceptance Criteria

Section 194.14(f) requires DOE to describe waste acceptance criteria and the measures taken to assure adherence to such criteria. EPA reviewed documentation provided by DOE and observed DOE audits and other activities, and concluded that DOE provided satisfactory descriptions of actions that will be followed to ensure adherence to the waste acceptance criteria. EPA therefore proposes to find DOE in compliance with § 194.14(f). Refer the preamble discussion of § 194.24 for a complete discussion of EPA's review of waste acceptance criteria and other waste characterization information.

G. Background Radiation

40 CFR 194.14(g) requires DOE to describe the background radiation in air, soil and water in the vicinity of the disposal system and the procedures employed to determine such radiation. DOE provided information regarding the levels of background radiation in air, soil, surface water, sediments, groundwater, and biota. DOE also provided a description of the procedures used to determine the background radiation. DOE indicated that background radiation in the vicinity of the WIPP site is influenced by natural sources of radiation, fallout from nuclear tests, and one local research project (Project Gnome, which involved the underground detonation of a nuclear device on December 10, 1961, at a site approximately 8 miles (13 kilometers) southwest of the WIPP site).

EPA found that DOE provided sufficient discussion of background radiation levels and associated procedures to monitor these media for radiation. EPA, therefore, proposes to find that DOE complies with § 194.14(g).

H. Topographic Maps

40 CFR 194.14(h) requires DOE to provide one or more topographic maps of the vicinity of the disposal system. At least one map must show boundaries of the controlled area and the location of active, inactive and abandoned injection and withdrawal wells in the controlled area and in the vicinity of the disposal

system. The CCA must include topographic maps with a contour interval sufficient to show clearly the pattern of surface water flow in the vicinity of the disposal system.

DOE provided four topographic maps that show the pattern of surface water flow in the vicinity of the WIPP. The CCA included three figures showing the locations of the controlled area within the U.S. Public Land Survey coordinate system, as well as a map showing the location of active, inactive, and abandoned injection and withdrawal wells in the controlled area and in the vicinity of the disposal system. EPA reviewed the topographic maps provided in the CCA to determine their sufficiency. EPA determined that DOE met the requirements of § 194.14(h) because it provided multiple, appropriately scaled, topographic maps of the vicinity of the disposal system.

I. Past and Current Meteorological Conditions

40 CFR 194.14(i) requires DOE to describe past and current climatologic and meteorological conditions in the vicinity of the disposal system. DOE is also required to project how these conditions are expected to change over the regulatory time frame.

DOE described past glaciation events, climatic changes, and precipitation and temperature averages. DOE also discussed how historical climatic conditions were used to anticipate climatic conditions 10,000 years in the future. DOE described current climatic conditions in the WIPP area, including summaries of recent rainfall, temperature, and wind data. DOE discussed how climate changes were incorporated in conceptual models.

Based on public comments and EPA's review of the CCA, EPA requested additional information on dissolution. Supplemental information submitted by DOE addressed EPA's concerns. EPA concluded that the description of past and present climatic changes and associated impacts on the WIPP disposal system were adequately addressed, and therefore proposes to find DOE in compliance with § 194.14(i).

J. Other Information Needed for Demonstration of Compliance

40 CFR 194.14(j) requires DOE to provide additional information, analyses, tests, or records determined by the Administrator or the Administrator's authorized representative to be necessary for determining compliance with 40 CFR Part 194. After receipt of the CCA dated October 29, 1996, EPA formally requested additional information from DOE in seven letters dated December 19, 1996, and February 18, March 19, April 17, April 25, June 6, and July 2, 1997. (Docket A–93–02, Items II–I–1, II–I–9, II–I–17, II–I–25, II–I–27, II–I–33, and II–I–37, respectively). The information requested in these letters was necessary for EPA's completeness determination and technical review. EPA staff and contractors also reviewed records maintained by DOE or DOE's contractors (e.g., records kept at the Sandia National Laboratories Records Center in Albuquerque, New Mexico). No additional laboratory or field tests were conducted by DOE at EPA's specific direction; however, DOE did conduct and document laboratory tests after October 29, 1996, in order to present additional data to the Conceptual Model Peer Review Panel.

The preamble for other sections of the Compliance Criteria discuss in greater detail DOE's responses to EPA's formal requests for additional information and any other supplementary information reviewed by EPA after October 29, 1996. All documents sent to EPA are available in the EPA docket. Additional documentation that was not sent to EPA but was reviewed by the Agency (e.g., calculations of actinide solubility for americium, plutonium, thorium and uranium) is also publicly available. Documentation of peer review panel meetings conducted after receipt of the CCA has been placed in the EPA docket. See Docket A–93–02, Item III–B–1 for further information on the location of all documentation reviewed by EPA.

EPA determined that DOE responded adequately to EPA's formal requests for additional information, analyses, and records; and therefore proposes to find that DOE complies with § 194.14(j).

K. Conclusion

Based on the information provided in the CCA and additional information submitted by DOE, EPA proposes that DOE demonstrates compliance with all subsections of § 194.14. For additional information on EPA's evaluation of compliance for § 194.14, see CARD 14.

X. General Requirements

The general requirements of 40 CFR Part 194, Subpart C, are intended to ensure that any compliance certification application ("CCA") is based on dependable and verifiable information and that EPA has the right to confirm the accuracy of such information. Although they have no direct corollary in the disposal regulations, EPA issued these requirements in implementing the disposal regulations because the Agency believes that a reasonable expectation of compliance with the containment requirements (discussed in subsequent portions of this preamble) can be achieved only if the information and methods used to conduct performance assessments are valid and reliable. To that end, the general requirements at §§ 194.22 through 194.27 establish requirements for quality assurance programs, models and computer codes, waste characterization, future state assumptions, expert judgment, and peer review.

A. Section 194.22, Quality Assurance

Section 194.22 establishes quality assurance ("QA") requirements for the WIPP. QA is a process for enhancing the reliability of technical data and analyses underlying DOE's CCA. Section 194.22 requires DOE to (a) establish and execute a QA program for all items and activities important to the containment of waste in the disposal system (including waste characterization activities, environmental monitoring, field measurements, computer codes, procedures for expert elicitation, disposal system designs, and data), (b) qualify data that were collected prior to implementation of the required QA program, (c) assess data for their quality characteristics, to the extent practicable, (d) demonstrate how data are qualified for their use in the CCA, and (e) allow verification of the above measures through EPA inspections. The DOE's QA program must adhere to specific Nuclear Quality Assurance ("NQA") standards and requirements issued by the American Society of Mechanical Engineers ("ASME").

The EPA assessed compliance with the QA requirements in two ways. First, EPA reviewed QA information in the CCA and associated reference documents. EPA's second level of review consisted of visits to the WIPP site, as well as WIPP-related facilities, to perform audits and inspections to verify DOE's compliance with the QA requirements. For example, EPA conducted audits to verify the proper execution of the QA program at DOE's Carlsbad Area Office ("CAO"), Sandia National Laboratories ("SNL"), and Westinghouse's Waste Isolation Division ("WID") at the WIPP facility. In this way, EPA was able to review voluminous records required by the NQA standards, but not required to be submitted as part of the CCA.

Section 194.22(a)(1) requires DOE to adhere to a QA program that implements the requirements of the following: (1) ASME NQA-1–1989 edition; (2) ASME NQA–2a-1990 addenda, part 2.7, to ASME NQA–2–1989 edition; and (3) ASME NQA–3–

1989 edition (excluding Section 2.1 (b) and (c), and Section 17.1). DOE incorporated these requirements in the Quality Assurance Program Document ("QAPD") contained in the CCA. The QAPD is the documented plan for the WIPP project, as a whole, to comply with the NQA requirements; it applies to all activities and items important to containment of waste in the WIPP. The QAPD addresses the 18 basic requirements of NQA–1, including supplemental requirements as established by NQA–1; the computer software requirements as established by NQA–2a, part 2.7; and the collection of scientific and technical information requirements for site characterization of high level nuclear waste repositories as established by NQA–3. The QAPD is implemented by DOE's CAO, which provides overall coordination of WIPP activities and has authority to audit all other organizations associated with waste disposal at the WIPP (such as WID, SNL and waste generator sites) to ensure that their lower-tier QA programs conform to the QAPD. EPA audited DOE's QA program at CAO and determined that DOE properly adhered to a QA program that implements the NQA standards and requirements. Therefore, EPA proposes to find DOE in compliance with § 194.22(a)(1). (For information on the incorporation of NQA requirements into lower tier program plans, refer to the subsequent discussion of § 194.22(a)(2), which addresses specific activities under the direct control of organizations other than DOE's CAO.)

Section 194.22(a)(2)(i) requires DOE to include information which demonstrates that the QA program has been established and executed for waste characterization activities and assumptions. In the CCA, DOE provided the QAPD and referenced criteria for the review and approval of a site-specific Quality Assurance Project Plan ("QAPjP") to address technical criteria and implementation procedures. The CCA listed five waste generator site QAPjPs that have been approved by DOE. DOE proposed that sites also will prepare site certification Quality Assurance Plans ("QAPs") that, together with the QAPjPs, are intended to establish all the NQA requirements applicable to waste characterization.[15] EPA finds that the QAPD, as it applies to waste characterization, is in conformance with the NQA requirements. As discussed below, the Agency intends to verify the adequacy of site-specific QA programs in the future.

Another important activity related to waste characterization is the ability to track waste shipped to and emplaced in the WIPP. The WIPP Waste Information System ("WWIS") is a computer database and reporting program that will track and tally the waste that comes to the WIPP. The WWIS is covered by QA programs both at the WID and at waste generator sites. At Westinghouse, the WID QAPD, which addresses the specific requirements of the NQA standards, governs operation of the system. In September 1997, EPA performed an inspection of the WID QA program applicable to the WWIS. At that time, the WWIS was demonstrated to be operational, and EPA determined that a QA program had been properly executed for the WWIS in accordance with the applicable NQA requirements.

The Compliance Criteria require that QA programs be established and executed specifically with respect to the use of process knowledge and a system of controls for waste characterization. (§§ 194.22(a)(2)(i) and 194.24(c)(3) through (5)) To accomplish this, waste generator site-specific QA programs and plans must be individually examined and approved by EPA to ensure adequate waste characterization programs are in place before EPA allows individual waste generator sites to transport waste for disposal at the WIPP. Since waste characterization activities have not begun for most TRU waste generator sites and storage facilities, EPA has not yet evaluated the compliance of many site-specific QA plans (QAPs and, where applicable, QAPjPs) and programs.

To date, one WIPP waste generator site, Los Alamos National Laboratory ("LANL"), has been approved by EPA to have established adequate QA programs (encompassed in a QAP and QAPjP) and to have properly executed QA procedures in accordance with the applicable NQA requirements. Prior to approval of LANL's site-specific QA program, EPA conducted an audit of DOE's overall WIPP QA program and approved its capability to perform audits in accordance with the requirements of NQA–1. EPA then inspected three DOE audits of LANL's QA program. Based on the results of the inspections, the EPA inspectors determined that the QA program had been properly executed at LANL. Therefore, EPA proposes to find that the requirements of § 194.22(a)(2)(i) have been met for the WID QAPD, the WWIS, and waste characterization activities at LANL.

With respect to other waste generator sites, EPA proposes to certify compliance with § 194.22(a)(2)(i) conditioned on separate, subsequent approvals from EPA that site-specific QA programs for waste characterization activities and assumptions have been established and executed in accordance with applicable NQA requirements at each waste generator site.

As waste generator facilities subsequent to LANL establish QA programs, EPA will assess their compliance with NQA requirements. In making any determination to approve a site-specific QA program for a waste generator, EPA will conduct an audit or an inspection of a DOE audit of a waste generator site. EPA will publish a notice in the **Federal Register** announcing its scheduled audit or inspection of a DOE audit and will provide at least a 30-day comment period during which interested parties may submit written comments. EPA will place in the docket copies of the site-specific QA program documents and other documentation relevant to the audit or audit inspection. Thus, the Agency's decision whether to approve the establishment and execution of a QA program at a specific waste generator site will be informed by both public comments and the results of the Agency's own independent evaluation of the site's compliance with the applicable NQA requirements.

EPA believes that approval of site specific QA programs is required by, and that this proposed procedure is consistent with the provisions of § 194.22(a)(2)(i) because it requires DOE to demonstrate "establishment and execution" of quality assurance programs for waste characterization assumptions and activities at the individual waste generator sites prior to shipment of wastes from such sites. EPA requests comment on whether the Agency should place a condition on its certification of compliance at WIPP consisting of future demonstrations by DOE that QA programs have been established and executed at individual waste generator sites, prior to shipment of TRU waste to WIPP from such sites. In particular, EPA requests comment on

[15] NQA–1 (Element II–2) requires that organizations responsible for activities affecting quality (in the case of the WIPP, affecting the containment of waste in the disposal system) must have documented QA programs in accordance with the applicable NQA requirements. The documentation for such programs is commonly referred to as a "quality assurance program plan," or "QAPP." For WIPP waste generator sites, the role of the QAPP is fulfilled by documents with other titles, such as the QAP or the QAPjP. The "TRU QAPP" referenced by DOE in the CCA is not a QAPP as described by the NQA standards; rather, it is a technical document that describes the quality control requirements and performance standards for characterization of TRU waste coming to the WIPP facility. The TRU QAPP is addressed more specifically in the preamble discussion of § 194.24, "Waste Characterization."

its preliminary conclusion that the proposed procedures for determining whether adequate quality assurance programs have been established and executed by DOE are consistent with Part 194. However, if, based upon public comment on today's proposed action, EPA concludes that it would be appropriate to make clarifying changes to Part 194 that specifically set forth these procedures, EPA may do so as part of its final action on today's proposal.

EPA will indicate its approval of site-specific QA programs by a letter from the Administrator's authorized representative to the Department; a copy of the *letter* will be placed in EPA's public docket. (As part of the certification rulemaking, EPA is proposing to define the Administrator's authorized representative as the "director in charge of radiation programs at the Agency," in order to clarify the delegation of responsibilities for 40 CFR Part 194, including activities such as requesting additional information from DOE, and inspecting and approving quality assurance programs.) After approval of site-specific QA programs, EPA will exercise its authority under §§ 194.21 and 194.22(e) to conduct unfettered inspections of approved waste generator sites to confirm that the approved plans are being properly maintained for waste characterization activities. For specific language on the quality assurance conditions of compliance, see Condition 2 of the proposed Appendix A to 40 CFR Part 194. For further discussion of waste characterization programs and certification of individual waste streams from generator sites, see the discussion of § 194.24 in this preamble.

Section 194.22(a)(2)(ii) requires DOE to include information which demonstrates that the QA program has been established and executed for environmental monitoring, monitoring of performance of the disposal system and sampling and analysis activities. Westinghouse's WID was responsible for implementing this requirement under the WID QAPD described in the CCA. The WID developed a WIPP Environmental Monitoring Plan ("EMP"), which applies to current site characterization and also to proposed pre-closure monitoring in accordance with § 194.42. The EMP included QA procedures for radiological and non-radiological environmental monitoring. Also included in the EMP were sample handling, laboratory procedures, required records and reports, and data analyses guidelines. DOE stated that the EMP is consistent with applicable elements of ASME NQA–1.

The EPA determined during its audit of WID that the requisite QA program had been established and executed for environmental monitoring, sampling and analysis activities. Therefore, EPA proposes to certify compliance with § 194.22(a)(2)(ii). Continued adherence to the executed QA program as it applies to disposal system monitoring will be confirmed by EPA in future inspections under its authority at §§ 194.21 and 194.22(e).

Section 194.22(a)(2)(iii) requires DOE to include information which demonstrates that the QA program has been established and executed for field measurements of geologic factors, groundwater, meteorologic, and topographic characteristics. EPA conducted an audit of the WID QA program and found the QAPD to be adequate and to be implemented in accordance with the applicable NQA requirements. Therefore, EPA proposes to find DOE in compliance with § 194.22(a)(2)(iii).

Section 194.22(a)(2)(iv) requires DOE to include information to demonstrate that the QA program has been established and executed for computations, computer codes, models and methods used to demonstrate compliance with the disposal regulations. In the CCA, DOE provided the CAO QAPD, which incorporates the application NQA requirements for computation and computer code information. Software development and management are controlled in accordance with criteria established by SNL software QA procedures and the WID QAPD. EPA reviewed information in the CCA and conducted audits of both SNL and WID QA programs. The Agency found that DOE's computer codes were documented in a manner that complies with the applicable NQA requirements, and that DOE's software QA procedures were implemented in accordance with ASME NQA–2a, part 2.7. EPA therefore proposes to determine that DOE complies with § 194.22(a)(2)(iv).

Section 194.22(a)(2)(v) requires DOE to include information which demonstrates that the QA program has been established and executed for procedures for implementation of expert judgment elicitation. EPA found that the requirements of this regulation were met with the implementation of CAO Team Procedure ("TP") 10.6 (Revision 0), CAO Team Plan for Expert Panel Elicitation (Revision 2), and CAO Technical Assistance Contractor ("CTAC") Experimental Programs Desktop Instruction No.1 (Revision 1). EPA proposes to find DOE in compliance with § 194.22(a)(2)(v). The process of expert judgment elicitation is discussed in further detail in the preamble for § 194.26 of the Compliance Criteria.

Section 194.22(a)(2)(vi) requires DOE to include information which demonstrates that the QA program has been established and executed for design of the disposal system and actions taken to ensure compliance with the design specifications. Design work for the repository sealing system was conducted under the SNL QA program. The repository seal system design was extensively reviewed by DOE, SNL, WID, and CAO Technical Assistance Contractor personnel, as well as independent design reviewers. The QA procedures established and implemented by SNL and WID address the requirements of the NQA standards; design verification was accomplished by a combination of NQA–1 Supplement 3S–1 methods. EPA audits of SNL and WID showed that the QA programs are adequate and properly executed. Therefore, EPA proposes to find DOE in compliance with § 194.22(a)(2)(vi).

Section 194.22(a)(2)(vii) requires DOE to include information which demonstrates that the QA program has been established and executed for the collection of data and information used to support compliance applications. SNL adequately addressed these requirements by implementing numerous QA procedures to ensure the quality of data and information collected in support of the WIPP. EPA's audit of SNL concluded that the QA program was adequate and appropriately implemented. Therefore, EPA proposes to find DOE in compliance with § 194.22(a)(2)(vii).

Section 194.22(a)(2)(viii) requires DOE to include information which demonstrates that the QA program has been established for any other item or activity not listed above that is important to the containment of waste in the disposal system. DOE has not identified any other item or activity important to waste isolation in the disposal system that require QA controls to be applied as described in the CAO QAPD. EPA has also not identified to date any other items or activities which require controls. However, EPA has reviewed the CAO QAPD and conducted audits of the CAO, SNL, and WID QA programs. The EPA audits determined that the QA organizations of CAO, WID. and SNL have sufficient authority, access to work areas, and organizational freedom to identify other items and activities affecting the quality of waste isolation. Therefore, EPA proposes to find DOE in compliance with § 194.22(a)(2)(viii).

Section 194.22(b) requires DOE to include information which demonstrates that data and information collected prior to the implementation of the QA program required by § 194.22(a)(1) have been qualified in accordance with an alternate methodology, approved by the Administrator or the Administrator's authorized representative, that employs one or more of the following methods: peer review; corroborating data; confirmatory testing; or a QA program that is equivalent in effect to § 194.22(a)(1) ASME documents. The CCA listed existing data that were reviewed by an Independent Review Team and that DOE determined to have been collected under a QA program equivalent to the NQA standards. DOE also provided information on NUREG–1297 peer reviews that were conducted to qualify existing data for engineered systems, natural barriers, waste form, and disposal room data. Finally, DOE identified data from literature sources.

EPA conducted two audits that traced new and existing data to their qualifying sources. The two audits found that equivalent QA programs and peer review had been properly applied to qualify existing data used in the PA. EPA also concluded that the use of existing data from peer-reviewed technical journals was appropriate, since the level of such reviews was likely to provide QA equivalent to NUREG–1297 peer reviews conducted by DOE. Therefore, EPA proposes to find DOE in compliance with § 194.22(b). Furthermore, the Agency is proposing to approve the use of any one of the following three methods for qualification of existing data: (1) peer review, conducted in a manner that is compatible with NUREG–1297; (2) a QA program that is equivalent in effect to ASME NQA–1–1989 edition, ASME NQA–2a–1990 addenda, part 2.7, to ASME NQA–2–1989 edition, and ASME NQA–3–1989 edition (excluding Section 2.1(b) and (c) and Section 17.1); or (3) use of data from a peer-reviewed technical journal.

Sections 194.22(c)(1) through (5) require DOE to provide information which describes how all data used to support the compliance application have been assessed, to the extent practicable, for specific data quality characteristics ("DQCs"). In the CCA, DOE stated that in most cases it was not practicable to document DQCs for parameters, but asserted that the intent of DQCs was fulfilled by other QA programs and quality control measures. In response to EPA's request for additional information, DOE clarified but did not substantially alter its approach. (Docket A–93–02, Items II–I–17 and II–I–24)

The Agency agrees that it is not appropriate to apply DQCs to parameters in the PA (e.g., anhydrite permeability parameter), but believes that they can be applied to measured data (i.e., field monitoring and laboratory experiments) on which parameter values are based. Because DOE misinterpreted EPA's requirements as applying to parameters, EPA found that the CCA and supplementary information did not systematically or adequately address DOE's consideration of DQCs for measured data. Therefore, the Agency reviewed additional materials—primarily data record packages at the SNL records center—to independently determine whether DQCs had been assessed for data used in PA. Data record packages document measured data considered by DOE in developing parameter values. EPA found that for recent data (five to ten years old), DOE's experimental program plans in the data record packages generally addressed data quality in measured data, including accuracy, precision, representativeness, completeness, and comparability during measurement and collection.

For older existing data, EPA found less documentation of assessment of DQCs. However, laboratory notebooks—which provide first-hand documentation of measurement procedures and results—supporting data record packages provided some information related to the quality of measurements (e.g., how well DOE's measured values compared with values found in peer-reviewed publications). Many existing data were also subject to peer review in order to qualify them for use in the compliance application; EPA concluded that the peer review panels considered the use of DQCs in determining that such data were adequate. EPA also agreed with DOE's argument in supplementary information that for most of the existing data, collection under a program equivalent to the NQA standards in § 194.22(a)(1) provided adequate evidence that the quality of data had been evaluated and controlled. Finally, EPA concurred with DOE's conclusion that the uncertainties in measured data reflected in DQCs have a small effect on compliance certainty, compared to other uncertainties in the PA (such as extrapolation of processes over 10,000 years).

Based on its review of data record packages, the Agency finds that DOE has assessed DQCs, to the extent practicable, for data used in the compliance application. EPA thus proposes to find that DOE complies with § 194.22(c). The Agency expects that DOE will assess DQCs for future waste characterization and monitoring activities; EPA will confirm assessment of DQCs for such measured data through inspections and evaluation of any compliance re-certification applications.

Section 194.22(d) requires DOE to provide information which describes how all data are qualified for use. SNL generated a table providing information of how all data in the PA were qualified. EPA audited the existing QA programs and determined that the data were qualified for use by independent and qualified personnel in accordance with NQA requirements. On this basis, EPA proposes to find DOE in compliance with § 194.22(d).

Section 194.22(e) allows EPA to verify execution of QA programs through inspections, record reviews, and other measures. As discussed above, EPA has conducted numerous audits of DOE facilities, and intends to conduct future inspections of waste generator site-specific QA plans under its authority. The Agency plans to conduct additional inspections, including audits, of CAO, SNL, and WID prior to publishing a final certification decision. The purpose of these inspections will be to verify that the QA programs for these organizations—which have already been found to be properly executed in accordance with the applicable NQA requirements—are being appropriately maintained. EPA will docket the results of these inspections, but will not consider them for the purpose of the proposed or final rule unless the inspections result in new information that indicates that the programs are no longer in conformance with the applicable NQA requirements.

In summary, EPA proposes to find DOE in compliance with the requirements of § 194.22 subject to the condition that EPA separately approve the establishment and execution of site-specific QA programs for waste characterization activities at waste generator sites. (See Condition 2 of the proposed Appendix A to 40 CFR Part 194.) For further information on EPA's evaluation of compliance for § 194.22, refer to CARD 22.

B. Section 194.23, Models and Computer Codes

Section 194.23 sets forth specific requirements for the models and computer codes used to calculate the results of performance assessments ("PA") and compliance assessments. In order for these calculations to be reliable, DOE must properly design and implement the computer codes used in

the PA. Design of computer codes begins with the development of conceptual models. Conceptual models consider the design of the repository and the features, events, processes, and scenarios that may occur at the WIPP which could affect the containment or release of radionuclides. In order for the final computer codes to obtain realistic solutions, the underlying conceptual models must be sound. DOE must next develop mathematical models from the conceptual models. Mathematical models set up a mathematical expression to describe the conditions in the repository and its surroundings. Numerical models are then created to describe how to solve the equations in the mathematical models. Since most of the mathematical models are sufficiently complex that analytical solutions are not possible, numerical models are used to provide iterative, approximate solutions to the mathematical models. Finally, DOE must program the numerical solutions from the numerical models into computer codes that perform calculations to estimate the cumulative releases of radionuclides caused by all significant processes and events.

In examining models and computer codes, EPA evaluated the development of the underlying conceptual models, evaluated the derivation of mathematical models and implementation of numerical models and computer codes, verified the quality assurance of computer codes, and performed its own independent computer calculations. In order to allow EPA to evaluate the underlying conceptual models, § 194.23 of the compliance criteria requires descriptions of conceptual models and scenario construction (§ 194.23(a)(1)), consideration of alternative conceptual models (§ 194.23(a)(2)), and documentation of peer review of the conceptual models (§ 194.23(a)(3)(v)). To ensure proper implementation of these conceptual models, § 194.23 also requires documentation that: future states of the disposal system are reasonably represented by conceptual models (§ 194.23(a)(3)(i)); mathematical models (or algorithms) reasonably represent the conceptual models (§ 194.23(a)(3)(ii)); numerical models (or solution methods) provide stable solutions to the mathematical models (§ 194.23(a)(3)(iii)); and computer codes accurately implement the numerical models and are free from coding errors and produce stable solutions (§ 194.23(a)(3)(iv)). In addition, DOE must describe the theoretical background of models and their method of analysis; how the computer codes operate and were developed; methods of data collection, data reduction and analysis; parameters developed from source data; the structure of the computer codes and a complete listing of source codes; and the effects of parameter correlation (§§ 194.23(c)(1) through (6)). Section 194.23(b) requires DOE to document that models and computer codes were developed in accordance with the specified QA requirements contained in the ASME NQA standards. Finally, § 194.23(d) requires DOE to provide all necessary data, information, software, and any other material to enable EPA to conduct its own independent computer simulations.

1. Conceptual Models

a. *Description of Conceptual Models.* Section 194.23(a)(1) requires the CCA to describe the conceptual models and the scenarios used in the CCA PA calculations. DOE developed 24 conceptual models to describe the WIPP disposal system. DOE also undertook an extensive screening process to determine which features, events, and processes (FEPs) were applicable to the disposal system. From the list of applicable FEPs, DOE developed scenarios to describe both undisturbed performance (natural processes and events) and disturbed performance (human intrusion, including mining and deep drilling) of the repository. The CCA included scenarios that satisfy the specific requirements of §§ 194.32 and 194.33 concerning the scope of PA and consideration of drilling events in PA. (See preamble discussions of §§ 194.32 and 194.33 for further details.)

EPA reviewed the descriptions of the 24 conceptual models and the scenario construction methods in the CCA and supplementary information and found them to be presented with sufficient clarity to permit full understanding of the descriptions and methods. However, both EPA and public commenters did not believe that DOE had performed sufficient analyses to rule out the potential effects of fluid injection related to oil production on the disposal system. Therefore, EPA required DOE to perform additional analyses of fluid injection. Based on supplementary information provided by DOE, EPA concluded that fluid injection can be screened out from the PA based upon low consequences to disposal system performance. EPA and commenters also had concerns about DOE's conceptual model for spallings.[16] The results of the spallings model were eventually determined to be reasonable and adequate for use in PA. For further discussion of the spallings model, refer to the discussion of models and computer codes later in this section.

The CCA and supporting documents contain a complete and accurate description of each of the conceptual models used and the scenario construction methods used. The conceptual models include those characteristics and attributes of the WIPP disposal system and its surroundings that adequately describe the possible future performance of the disposal system. The conceptual models contain appropriate simplifications of the characteristics, attributes, and processes of the disposal system. The scenario construction descriptions include sufficient detail to understand the basis for selecting some scenarios and rejecting others and are adequate for use in the CCA PA calculations. Based on its review of DOE's descriptions of the conceptual models and the scenario construction procedures presented in the CCA and supporting documents, the Agency proposes to determine that the DOE has demonstrated compliance with the requirements of § 194.23(a)(1).

b. *Alternative Conceptual Models.* Section 194.23(a)(2) requires the CCA to describe plausible, alternative conceptual models that DOE seriously considered but did not use to support compliance, and to explain why DOE decided the alternative conceptual model does not accurately portray performance of the disposal system. This requirement allows EPA to evaluate whether the conceptual models underlying the PA and compliance assessment are appropriate and adequate.

DOE provided information on alternative conceptual models in the CCA, both in its discussion of FEPs and in its documentation of the conceptual models peer review panel. The peer review panel identified no major issues concerning alternative models.

EPA reviewed information on alternative conceptual models in the CCA and in documentation from the peer review panel. EPA requested, and DOE provided, supplementary information containing a focused, detailed description of plausible alternative conceptual models considered but not used in the PA. DOE also explained the reasons why these alternative models were not used to

[16] "Spallings" refers to releases of solids forced up and out of an intrusion borehole by gas pressure in the repository.

describe the performance of the repository. EPA determined that DOE sufficiently documented the rationale and approach used to select the conceptual models employed in the CCA PA and to reject other models.

As discussed elsewhere in this section, the conceptual models peer review panel and EPA had concerns specifically with the spallings conceptual model. Because the conceptual models peer review panel initially judged the spallings model used in the CCA to be inadequate, DOE developed an alternative mechanistically-based computational approach to estimate the volume of spallings released to the accessible environment. The volumes of radioactive waste to be released that were calculated by the alternative mechanistically-based model were less than one tenth those predicted in the model used in the CCA. Because the original spallings model results used in the CCA were conservative, the conceptual models peer review panel and EPA found the predicted results from the original model to be acceptable for use in the PA.

Based on information provided in the CCA together with supplementary information provided by DOE in response to specific EPA requests, EPA concluded that DOE provided an adequate and complete description of alternative conceptual models seriously considered but not used in the CCA. DOE provided adequate discussion of why these alternative models were not deemed to adequately portray the performance of the disposal system. Therefore, EPA proposes to find DOE in compliance with § 194.23(a)(2).

c. *Future States of the Disposal System and Peer Review.* Section 194.23(a)(3)(i) requires the CCA conceptual models and scenarios to reasonably represent future states of the disposal system. Section 194.23(a)(3)(v) requires the CCA to document that conceptual models have undergone peer review in accordance with § 194.27, which requires that the peer review meets the guidance of NUREG–1297. Under this guidance, the peer review must include the following: A listing of the reviewers; requirements for the acceptability of each reviewer; individual statements by peer reviewers reflecting dissenting views, if any; a discussion of the conceptual models peer reviewed; an evaluation of data and information used to develop conceptual models; an evaluation of the validity of conceptual model assumptions; an evaluation of alternative conceptual models; an evaluation of the uncertainty in the conceptual models and a discussion of consequences if the conceptual model chosen is inappropriate for the site; a statement indicating the adequacy of the conceptual models used for the disposal system; a statement of the accuracy of the results based on the conceptual models employed; and a discussion of the validity of the conclusions drawn based on the conceptual models. As part of the review of adequacy of the conceptual models, peer reviewers considered whether conceptual models reasonably represented future states of the disposal system. The NUREG–1297 requirements and the process of peer review are discussed in greater detail in the preamble for § 194.27.

DOE convened a conceptual models peer review panel to review the 24 conceptual models used in the CCA PA. During the initial review, the panel found that 11 models were not adequate and 13 models were adequate for use in PA. The panel initially found the 11 conceptual models to be inadequate for a variety of reasons, mostly related to the adequacy of assumptions incorporated in the conceptual models and the amount of supporting data or analyses for certain features of the conceptual models. Based on additional information provided by DOE and three subsequent review sessions, the panel found all the models to be adequate for use in PA except the spallings model. They found that the original CCA PA spallings model did not reasonably represent possible future states of the disposal system because it did not fully model all potential mechanisms that may cause pressure-driven solid releases. The panel ultimately concluded, based on substantial analytical and experimental work provided by DOE, that the spallings values used in the CCA are reasonable for use in PA. The panel found that, while the spallings model does not accurately represent the future state of the disposal system, its inaccuracies are of an overly conservative nature, and in fact, may overestimate the actual waste volumes that would be expected to be released by the spallings process.

EPA concurs with the conceptual model peer review panel's findings, based upon the results of DOE's analysis and development of an alternative model for spallings, which showed that the CCA PA spallings model overestimates spallings releases by up to ten times or more. The peer review panel's findings considered whether conceptual models reasonably represented future states of the disposal system. EPA does not propose to determine that the spallings model "reasonably represents possible future states of the repository." The additional modeling conducted by DOE, and the additional data developed by DOE, however, provide a substantial basis for EPA to conclude that the results of the spallings model are adequate and useful for the purpose for which conceptual models are intended, i.e., to aid in the determination of whether the WIPP will comply with the disposal regulations during the regulatory time period. Because the spallings model produces reasonable and conservative results, EPA proposes to accept it for purposes of demonstrating compliance with § 194.23(a)(3)(i).

The information on peer review in the CCA and in supplementary information demonstrates that all conceptual models have undergone peer review consistent with the requirements of § 194.27. Therefore, the Agency proposes to find that DOE has demonstrated compliance with the requirements of § 194.23(a)(3)(v).

d. Public Comments. During the public comment period on the Advance Notice of Proposed Rulemaking ("ANPR"), EPA received numerous comments challenging various aspects of the spallings model. EPA and the conceptual models peer review panel, among others, shared concerns about the adequacy of the spallings model and on numerous occasions informed DOE of their concerns. In response to these concerns, DOE did substantial additional work, developed a mechanistically-based model and supported this model with experimental data. The peer review panel concluded that the spallings model used in the CCA PA calculated release volumes that were reasonable and probably conservative. On this basis, and as discussed above, EPA proposes that it is appropriate to accept the results from the spallings model for purposes of demonstrating compliance with § 194.23(a)(3)(i).

EPA also received public comments on the ANPR concerning modeling of fluid injection. Commenters expressed concern that the CCA PA calculations did not model possible effects of pressurized brine injection that may fracture the anhydrite beds near WIPP, enter the repository, become contaminated and flow to various release points. EPA required DOE to perform extensive supplementary analyses to evaluate the effects that brine injection could have on the repository. EPA also performed independent analyses to address concerns related to brine injection. EPA has determined that brine injection does not pose an unacceptable risk and that associated scenarios can be reliably screened from further consideration.

2. Progression From Conceptual Models to Computer Codes

Most of the requirements of § 194.23(a)(3) concern the Agency's evaluation of the progression from conceptual models to computer codes used in the CCA PA and compliance assessment. Each requirement in §§ 194.23(a)(3)(i) through (iv) is intended to ensure that DOE has correctly implemented the steps between development of the underlying conceptual models and encoding the computer software that implements the PA and compliance assessment calculations. The initial step of evaluating the fundamental conceptual models is discussed above.

a. Mathematical Models. Section 194.23(a)(3)(ii) requires the CCA to document that mathematical models incorporate equations and boundary conditions which reasonably represent the mathematical formulation of the conceptual models. This requirement is intended to ensure that PA calculations are based upon mathematical equations that truly implement the conditions in the fundamental conceptual models. Many of the mathematical equations are partial differential equations, which consider rates of change; thus, codes incorporating these mathematical models need initial and boundary conditions between which the rates of change in the equations will operate.

DOE documented the development of each computer code used in PA and compliance assessment, including the associated mathematical models and numerical models. This information was contained primarily in Users Manuals, Validation Documents, Implementation Documents, and Requirements Document & Verification and Validation Plans for each CCA PA computer code. EPA reviewed information supplemental to the CCA for each CCA PA computer code and evaluated whether the mathematical models incorporate equations and boundary conditions which reasonably represent the mathematical formulation of the conceptual models.

EPA reviewed the mathematical model equations and boundary conditions for the following codes: PANEL, BRAGFLO, NUTS, FMT, SANTOS, BRAGFLO_DBR, GRASP–INV, SECOFL2D, SECOTP2D, CCDFGF, and CUTTINGS_S. These are the codes DOE used to model the behavior of the repository and its surroundings and to compute results of the PA calculations. The codes PANEL, BRAGFLO, NUTS, FMT, and SANTOS incorporate mathematical model equations that implement the conceptual models for predicting future characteristics of the waste repository. These five codes simulate the following effects, respectively: concentrations of radioactive waste in brine within the waste-containing panels in the repository; flow of brine and gas in the repository; solubility and transport of radionuclides released from the repository; solubility of radionuclides in the repository; and collapse of the repository through salt creep closure of the Salado. The computer code BRAGFLO_DBR describes waste dissolution in brine and transport of the contaminated brine through direct brine releases. The three computer codes GRASP–INV, SECOFL2D, and SECOTP2D mathematically describe flow and transport of waste-laden brine in the Culebra dolomite. The computer code CUTTINGS_S incorporates mathematical model equations modeling releases of radioactive waste upon intrusion of a drill bit into the repository. The computer code CCDFGF computes complementary cumulative distribution functions ("CCDFs") for the results of PA.

In general, EPA found that the descriptions of mathematical formulations were adequately explained and were reasonable. The Agency found that DOE adequately documented and described simplifications of conceptual models in the CCA. EPA also concluded that DOE provided an adequate technical basis to support the mathematical formulations. EPA tested each of the codes with functional tests to verify that each computer code would perform according to its functional requirements.[17] This analysis and testing indicated that equations and boundary conditions were properly incorporated into the mathematical models and that boundary conditions were reasonable representations of how the conceptual models should be implemented.

EPA encountered problems with the governing equations of the mathematical models and the representation of the boundary conditions in the codes CUTTINGS_S, SECOFL2D, SECOTP2D, NUTS and BRAGFLO. EPA specified that the equations in the codes be corrected and that the changes to the codes be documented. The Agency later required DOE to perform additional calculations in a Performance Assessment Verification Test ("PAVT") in order to verify that the cumulative impact of all necessary corrections to input parameters, conceptual models, and computer codes used in PA was not significant enough to necessitate a new PA. For the PAVT, DOE used corrected versions of the BRAGFLO, NUTS and SECOTP2D computer codes. The results of the PAVT demonstrate that the cumulative impact of all these necessary corrections did not require new PA runs. DOE resolved all of EPA's questions related to the equations that make up the mathematical models and the incorporation of the boundary conditions of the various codes by correcting the codes and performing the PAVT.

Based on information contained in the CCA and supporting documentation for each code, EPA concludes that the mathematical models used to describe the conceptual models incorporate equations and boundary conditions which reasonably represent the mathematical formulation of the conceptual models. DOE resolved all issues raised by the Agency. DOE has provided an adequate technical basis to support the mathematical formulations used in the PA. Therefore, the Agency proposes to find DOE in compliance with § 194.23(a)(3)(ii).

b. Public Comments on Mathematical Models. During the public comment period on the ANPR, EPA received comments on aspects of the mathematical models. Several commenters felt that the mathematical models in the CCA PA, particularly those related to ground-water flow in the Culebra dolomite, did not account sufficiently for three-dimensional processes and boundary conditions. A DOE report provided a detailed sensitivity analysis of ground-water flow characteristics in the Culebra. This report concluded that the majority of ground-water flow through the Culebra is horizontal. (Docket A–93–02, Item II–G–1, Reference #147) From the perspective of calculating the potential consequences to repository performance, neglecting vertical leakage into and out of the Culebra is conservative. EPA believes that the two-dimensional modeling approach used in the PA for ground-water flow in the Culebra dolomite is conservative and adequate. EPA also reviewed the FEP screening analysis related to flow of brine and gas in the repository and concluded that there are only minor differences between the two-dimensional and three-dimensional computations. Therefore, EPA believes that the two-dimensional geometry used in the BRAGFLO computer code is reasonable and appropriate for the CCA PA.

EPA also received public comments on the ANPR concerning the modeling

[17] A functional requirement specifies how the code is intended to operate, including inputs and outputs.

of ground-water flow and radionuclide transport processes in the Culebra. Commenters stressed that scientific understanding of ground-water flow in fractured rock systems is still developing and that DOE requires greater documentation of processes and parameters embodied in the CCA PA. EPA notes in response to public comments that DOE conducted an extensive investigative program to improve its theories of ground-water flow and radionuclide transport through the Culebra. Although these activities have greatly improved the understanding of the geohydrologic system, EPA recognizes that a degree of uncertainty will always exist when attempting to make predictions about the performance of WIPP 10,000 years into the future. EPA required DOE to address this uncertainty in its PA by assigning ranges and distributions to uncertain variables, such as fracture spacings, distribution coefficients, porosities and transmissivity. EPA also required DOE to perform further analysis using different parameter values and distributions in the PAVT. EPA believes that this approach to handling uncertainty is appropriate because the uncertainty will be captured by the ranges and distributions assigned to parameters.

c. Numerical Models. Section 194.23(a)(3)(iii) requires documentation that numerical models provide numerical schemes which enable the mathematical models to obtain stable solutions. Although some mathematical models can be solved directly, many of the mathematical equations used in PA for the WIPP are so complex that they require the use of numerical solution methods to provide an approximate solution. It is important that solutions to the mathematical models be stable because unstable solutions may make it impossible to proceed to the next step in obtaining PA results or may call into question the results of the model.

The relevant information was contained in supplemental information from DOE, including Analysis Packages for each code and the documents described in the previous section. This documentation includes testing results for problems that are very similar to those solved by the code(s) in the CCA PA, in order to evaluate the stability of solutions from the numerical schemes used to solve the mathematical model equations. DOE also maintained a computational record of whether any of the codes experienced stability problems during the CCA PA calculations. The codes that use numerical solvers include: SANTOS, CUTTINGS_S, SECOFL2D, SECOTP2D, PANEL, BRAGFLO, BRAGFLO_DBR, NUTS, and GRASP–INV.

EPA reviewed all the relevant documentation on numerical solution schemes contained in the CCA and supplementary information about each code. EPA also executed DOE code verification tests to search for possible stability problems. EPA's review identified stability concerns related to the following codes: CUTTINGS_S, SECOFL2D, SECOTP2D, and NUTS. In the case of the NUTS and SECOTP2D codes, DOE was able to make minor changes to the codes to correct their stability problems. EPA's concerns regarding potential stability problems with CUTTINGS_S and SECOFL2D were alleviated after DOE provided results from further stability and code verification testing that showed these problems had been corrected. DOE satisfactorily resolved all EPA concerns regarding code stability issues.

Based on the CCA and supplementary information provided by DOE, the Agency determines that DOE provided sufficient technical information to document the numerical models used in the CCA. Based on verification testing, EPA determined that the numerical models produced stable solutions. DOE resolved stability problems with the BRAGFLO, NUTS, SECOFL2D and SECOTP2D computer codes by completing code revisions and supplementary testing requested by the Agency. Therefore, EPA proposes to find DOE in compliance with § 194.23(a)(3)(iii).

d. Computer Codes. Section 194.23(a)(3)(iv) requires documentation that computer models accurately implement the numerical models, such that computer codes are free of coding errors and produce stable solutions. This is the final step to ensure that the underlying conceptual models are implemented correctly in the PA calculations and to ensure that the PA calculations will yield valid results.

To ensure that PA computer codes accurately implement the numerical models and are free of coding errors, DOE adopted a number of Quality Assurance Procedures for each step in the software development process. (See also the preamble discussions of §§ 194.22 and 194.23(b).) DOE documented information on the software development process in Users Manuals, Validation Documents, Implementation Documents and Requirements Document & Verification and Validation Plans for each computer code.

EPA performed an independent review of the CCA PA computer codes used to support the PA. As part of this review, EPA executed functional tests established by DOE for each of the codes to verify that each computer code performed according to its functional requirements, and to verify that the computer codes accurately implemented the numerical models, were free of coding errors, and produced stable solutions. The codes that EPA reviewed and tested include: SANTOS, CUTTINGS_S, SECOFL2D, SECOTP2D, CCDFGF, LHS, PANEL, BRAGFLO, BRAGFLO_DBR, FMT, NUTS, GRASP–INV and ALGEBRA. EPA also reviewed all of the relevant documentation pertaining to each of the major codes described above.

EPA identified issues related to coding errors for the following codes: SECOFL2D, SECOTP2D, and NUTS. To address these concerns, EPA requested that DOE perform a number of additional analyses. In the process of responding to EPA's concerns, DOE discovered, rectified and documented several minor coding errors. Results from an impact analysis by DOE indicated that the coding errors would have very little impact on the WIPP's compliance with the disposal regulations. These issues were resolved to EPA's satisfaction.

Based on the CCA and supplementary information, the Agency determined that DOE provided sufficient technical information to document the numerical models used in the CCA. Based on verification testing, EPA determined that the computer codes accurately implement the numerical models and that the computer codes are free of coding errors and produce stable solutions. DOE resolved coding error problems that EPA initially encountered by performing code revisions and supplementary testing requested by the Agency. Therefore, the Agency proposes to conclude that DOE has demonstrated compliance with § 194.23(a)(3)(iv).

3. Quality Assurance

Section 194.23(b) requires that computer codes used in the CCA must be documented in a manner that complies with the quality assurance requirements of ASME NQA–2a–1990 addenda, part 2.7, to ASME NQA–2–1989 edition. This requirement is intended to ensure proper development and documentation of software and to identify any potential problems. Based on EPA audits and CCA review, EPA found that code documentation meets the NQA requirements, and thus proposes to find that DOE complies with § 194.23(b). See the preamble discussion of § 194.22(a)(2)(iv), Quality assurance, for further discussion of EPA's evaluation of compliance.

4. Documentation of Models and Codes

Sections 194.23(c)(1) through (6) contains a number of requirements related to documentation of models and computer codes. These requirements allow EPA to evaluate the design of the models, to evaluate the numerical values selected to describe the repository and its surroundings, and to operate the software used to perform the PA calculations.

DOE documented the development of computer software in a series of documents that supplement the CCA. The information that EPA reviewed was contained primarily in Analysis Packages, User's Manuals, Validation Documents, Implementation Documents and Requirements Document & Verification and Validation Plans for each code. DOE used these documents to track development of software codes beginning from the conceptual model stage, and continuing through derivation of the mathematical equations and their solutions, setting computational requirements for computer codes, designing the computer software, programming the software, and testing the codes after they are programmed. Among the types of information found in these documents are general descriptions of the models, descriptions of the theoretical background of models, discussions of the limits of the models, instructions for executing computer codes, information on the required input and output formats with examples, reports on testing of the computer codes, structure of the computer codes, source codes,[18] and sources of data used to support parameter values used in the models and codes.

a. Theoretical Background. Section 194.23(c)(1) requires the CCA to describe the theoretical backgrounds of each model and the method of analysis or assessment used by each model. EPA evaluated whether DOE's descriptions of the computer codes provided sufficient detail to determine if the codes are formulated on a sound theoretical foundation, and whether DOE provided clear documentation describing exactly how each of the codes was used to support the PA. The codes that EPA reviewed include: CUTTINGS_S, SECOFL2D, SECOTP2D, CCDFGF, LHS,[19] PANEL, BRAGFLO, BRAGFLO_DBR, NUTS, FMT, GRASP–INV, SANTOS and ALGEBRA.[20] These codes describe the repository, the movement of radionuclides in contaminated brine through the overlying Culebra dolomite, releases of radionuclides when a drill penetrates the repository, and calculations of releases for final results of the PA. EPA located the majority of the information in the Users Manuals and Analysis Packages for each code, found in the Sandia National Laboratories WIPP Record Center.

In a few cases, EPA initially found the theoretical description of the computer codes to be inadequate. Most notably, the mathematical description of the solution precipitation model contained in the NUTS code, which predicts radionuclide transport in the repository and in units underlying the Culebra, was absent from the documentation. DOE addressed EPA's concerns by providing supplementary reports that describe in detail those theoretical discussions that were originally deficient. With respect to the documentation pertaining to the method of analysis, EPA found the descriptions in the Analysis Packages for each code to be sufficiently complete. In several instances, EPA requested that DOE clarify the written documentation, which DOE did.

Based on information contained in the Users Manual and Analysis Packages for each code and supplementary information requested by EPA to address specific problems uncovered in the course of the compliance review, EPA found that DOE has provided sufficient documentation so that individuals knowledgeable in the subject matter have sufficient information to judge whether the codes are formulated on a sound theoretical foundation, and whether the code has been used properly in the PA. EPA also found that the level of documentation is consistent with the ASME requirements for quality assurance as well as consistent with recent standards on ground-water modeling published by the American Society for Testing and Materials (ASTM). Therefore, EPA proposes to determine that DOE has complied with the requirements of § 194.23(c)(1).

b. Descriptions of Models. Section 194.23(c)(2) requires the CCA to document the following kinds of information: general descriptions of the models; discussions of the limits of applicability of each model; detailed instructions for executing the computer codes, including hardware and software requirements; input and output formats with explanations of each input and output variable and parameter; listings of input and output files from a sample computer run; and reports on code verification, bench marking, validation,[21] and quality assurance ("QA") procedures. Section 194.23(c)(3) requires documentation of the structure of the computer codes in detail and complete listings of the source codes.

The codes that EPA reviewed include: CUTTINGS_S, SECOFL2D, SECOTP2D, CCDFGF, LHS, PANEL, BRAGFLO, BRAGFLO_DBR, NUTS, FMT, GRASP–INV, SANTOS and ALGEBRA. The supplemental information from DOE that documented code development was described above in this section. DOE also set forth a number of objectives regarding issues that must be covered in code documentation to meet the QA criteria outlined in Sections 4 and 6 of the ASME NQA–2a–1990 addenda, part 2.7, to ASME NQA–2–1989.

EPA reviewed the supplemental documents, executed the computer codes, and evaluated the code verification, bench marking, and validation documentation. During its review, EPA identified a number of areas where the Agency initially judged the documentation to be inadequate. EPA required the Department to perform an analysis on the NUTS computer code, to develop a code requirement and test the statistical validity of certain aspects of the GRASP–INV code, to provide evidence that the GRASP–INV code was tested in a manner consistent with its implementation in the PA, and to document a sample computer run that corresponds to calculation of the CCA PA results. DOE provided this additional supporting analysis and documentation and satisfied EPA's concerns.

DOE submitted all of the source code listings and a detailed description of the structure of computer codes in the Implementation Documents for each code. With this information, a user can compile the source code and install it on a computer system identical to that used in the CCA PA calculation. EPA found that DOE submitted all of the source code listings. EPA identified no

[18] "Source code" means the written description of each step the computer code will follow when it is executed.

[19] LHS, or Latin Hypercube Sampling, is a code that selects or "samples" a numerical value from a distribution of probable values for a parameter. For more information on LHS, see the preamble discussion of the requirements of § 194.34.

[20] The ALGEBRA computer code manipulates input data and initial conditions that allow other codes to perform their calculations.

[21] Verification, bench marking and validation are steps in testing computer codes to ensure they operate as intended. Verification means that the aspect of the code being tested matches known solutions. Bench marking means that solutions from the code are compared to results from an outside reference or "bench mark" calculation, for more complicated situations where the solutions to a problem may not be known exactly. Validation means all aspects of the code work together properly.

problems with the detailed descriptions of the structure of the computer codes.

EPA found that the CCA and supplementary information included an adequate description of each model used in the calculations, a description of limits of applicability of each model, detailed instructions for executing the computer codes, hardware and software requirements to run these codes, input and output formats with explanations of each input and output variable and parameter, listings of input and output files from sample computer runs, and reports of code verification, bench marking, validation, and QA procedures that are adequate for use in the CCA PA. EPA also found that DOE adequately provided a detailed description of the structure of the computer codes and supplied a complete listing of the computer source code in supplementary documentation to the CCA. The documentation of computer codes describes the structure of computer codes with sufficient detail to allow EPA to understand how software subroutines are linked. The code structure documentation shows how the codes operate to provide accurate solutions of the conceptual models. Therefore, EPA proposes to determine that DOE has demonstrated compliance with §§ 194.23(c) (2) and (3).

c. Parameters. Section 194.23(c)(4) requires detailed descriptions of data collection procedures, data reduction and analysis, and code input parameter development. Parameters are numerical values or ranges of numerical values used to describe different physical and chemical aspects of the repository, the geology and geometry of the area surrounding the WIPP, and possible scenarios for human intrusion. Some parameter values are well-established physical constants, such as the Universal Gas Constant or atomic masses of radionuclides. Parameters also can be physical, chemical or geologic characteristics that DOE established by experimentation. DOE has also assigned parameters to aspects of human intrusion scenarios, such as the diameter of a drill bit used to drill a borehole that might penetrate the repository.

DOE discussed information supporting parameter development in the CCA and in parameter records located in the SNL WIPP Record Center. The records at SNL Record Center include WIPP parameter entry forms, Parameter Records Packages. Principal Investigator Records Packages, Data Records Packages, and Analysis Packages. DOE uses all of these documents to explain the full development of parameter values used as inputs to the CCA PA calculations.

The Agency reviewed the CCA, parameter documentation and record packages for approximately 1,600 parameters used as input values to the CCA PA calculations. EPA further reviewed parameters record packages and documentation in detail for 465 parameters important to performance of the disposal system. The Agency selected parameters to review in depth based on the following criteria: parameters that were likely to contribute significantly to releases or seemed to be poorly justified; parameters that control various functions of the CCA PA computer codes that were likely to be important to calculations of releases and important to compliance with the containment requirements of § 191.13; and other parameters the Agency used to evaluate the overall quality of SNL's documentation traceability. The Agency examined DOE's parameter documentation to see if the following elements were present: detailed listings of code input parameters and the parameters that were sampled; codes in which the parameters were used and the computer code names of the sampled parameters; descriptions of the sources of data; descriptions of the parameters, data collection procedures, data reduction and analysis, and code input parameter development; discussions of the linkage between input parameter information and data used to develop the input information; discussions of the importance of the sampled parameters relative to final calculations of releases, correlations among sampled parameters, and how these are addressed in PA; a listing of the sources of data used to establish parameters; and data reduction methodologies used for CCA PA parameters, including an explanation of QA activities.

After its initial review, the Agency found that DOE had a great deal of documentation available in the SNL Records Center supporting most of the parameters used in the CCA PA. However, EPA had some concerns about the completeness of the list of CCA PA parameters, the description and justification to support the development of some code input parameters, and the traceability of data reduction and analysis of parameter-related records. The Agency did not agree with the technical justification of some parameter values and probability distributions. The Agency did not find adequate documentation to support one of DOE's professional judgement parameters, the waste particle size value (expressed as a particle diameter). Other parameters such as professional judgment parameters and some parameters that were used in DOE's 1992 PA calculations were found to have adequate documentation to support the value used in the CCA PA calculations.

During its review, EPA found that the following types of documentation were necessary to improve DOE's records: a comprehensive database of all parameters used in the CCA PA, a database of all parameters based on experimental data, "roadmaps" that document and link CCA PA parameters to their sources, complete record packages in the SNL Record Center, background documentation on the development of those parameters that were originally used in DOE's 1992 PA calculations and again were used in the CCA PA calculation, and adequate explanations of why the 149 professional judgment parameters in the comprehensive parameter database did not need expert elicitation. DOE provided all of these pieces of documentation, primarily by improving the quality of the records stored in the SNL WIPP Records Center. The Agency did not accept the use of professional judgement to derive the waste particle size parameter, and thus required DOE to use the process of expert elicitation to develop the value for this parameter. (See also the preamble discussion for § 194.26 regarding expert elicitation for the waste particle size.) After subsequent review and evaluation of the SNL WIPP Record Center records and after completion of expert elicitation, EPA was satisfied with the additional documentation provided by DOE for these areas of concern.

The Agency requested further documentation from DOE, expressing concern about information supporting 58 parameters. EPA divided these parameters into those parameters lacking supporting evidence, those parameters that have records supporting values other than those selected by DOE, and those parameters that are not explicitly supported by the relevant data or information. DOE provided additional information supporting some of the parameters of concern to EPA. The Agency also performed its own sensitivity analyses for the parameters to determine if changes to some parameters have a significant impact on the final computer calculations. The Agency's concerns were resolved for thirty-four of these parameters, either by DOE's submission of additional documentation or by the results of sensitivity analyses conducted by EPA that indicated that changes to certain parameter values would not

significantly impact results of computer calculations.

The Agency later required DOE to perform additional calculations in a Performance Assessment Verification Test ("PAVT") in order to verify that the cumulative impact of all required and other corrections to input parameters, conceptual models, and computer codes used in PA was not significant enough to necessitate a new PA. EPA directed DOE to incorporate modified values or distributions for twenty-four parameters in the PAVT. The PAVT showed that the calculated releases may increase by up to three times from those in the original CCA PA, but that the WIPP is still an order of magnitude below the containment requirements in § 191.13. For further information about results of the PAVT, see the preamble for § 194.34, "Results of PA." DOE satisfied EPA's concerns about the parameters by incorporating EPA's changes to the parameter values and parameter distributions in the PAVT.

Upon subsequent review and evaluation, EPA determined that DOE, after additional work and improvement of records in the SNL Record Center, adequately provided a detailed listing of the code input parameters; listed sampled input parameters; provided a description of parameters and the codes in which they are used; discussed parameters important to releases; described data collection procedures, sources of data, data reduction and analysis; and described code input parameter development, including an explanation of QA activities. Therefore, the Agency proposes to determine that the CCA complies with § 194.23(c)(4).

d. Public Comments on Parameter Values. During the public comment period for the ANPR, EPA received comments on specific parameter values. After the end of the ANPR public comment period, EPA also received comments on parameter distribution values that the Agency mandated DOE include in the PAVT.

The Agency performed a thorough review of the parameters and the parameter development process, as discussed in the previous section. In its initial review, the Agency found that DOE had a great deal of documentation supporting most of the parameters used in the CCA PA available in the SNL Records Center. EPA specifically requested DOE to perform the PAVT in order to determine the effects of different parameter distributions for those parameters that concerned EPA and that appeared to have a significant impact on the results of PA.

e. Software Licenses. Section 194.23(c)(5) requires the CCA to document any licenses necessary for software used in the PA. DOE stated that it did not use any software requiring licenses, since software was developed by DOE or its contractors. EPA concurs with DOE's statement, and thus proposes to find that the CCA complies with § 194.23(c)(5).

f. Parameter Correlation. Section 194.23(c)(6) requires the CCA to provide an explanation of the manner in which models and computer codes incorporate the effects of parameter correlation. Parameters are correlated if they are not completely independent of each other. For example, if two parameters are programmed into computer codes so that both increase or decrease under the same conditions, the two parameters are correlated. Such a correlation can be directly programmed as an explicit correlation specified by the computer user. A parameter correlation also can be programmed into computer codes indirectly through an induced correlation when one parameter is used to derive a second parameter in the code. EPA evaluated parameter correlation in the CCA because an improper parameter correlation may call into question some parameter values and may even call into question the validity of the results from PA, depending on how significant the correlated parameters are.

User-specified (explicit) parameter correlations are introduced into the CCA PA calculations using a correlation matrix or table in the Latin Hypercube Sampling (LHS) computer program. Of all the parameters, only rock compressibility and permeability are explicitly correlated in the LHS computer code input file. When values that are sampled using the LHS computer code are used to calculate other values in the CCA PA calculations, an induced correlation parameter relationship is created through mathematical formulas used in subsequent computer codes. This is the prevalent method of correlation used in DOE's PA.

EPA reviewed the documentation in the LHS Users Manual that explains how parameter correlation is included in the parameter sample process. EPA also reviewed information in the CCA which discussed the mathematical methods used to incorporate parameter correlation into the CCA PA calculations. EPA also reviewed DOE's sensitivity analysis of the parameters sampled in the CCA PA, which includes a discussion of the impacts of parameter correlations.

Based on its review of CCA documentation and supplementary information, EPA determined that DOE has adequately demonstrated the manner in which the models and computer codes incorporate the effects of parameter correlation. Specifically, the CCA contains adequate: (1) Discussions that explain how the effects of parameter correlation are incorporated; (2) explanations of the mathematical functions that describe these relationships; and (3) descriptions of the potential impacts on the sampling of uncertain parameters. The CCA also adequately documented the effects of parameter correlation for both conceptual models and the formulation of computer codes, and appropriately incorporated these correlations in the PA. Thus, the Agency proposes to find that DOE has demonstrated compliance with the requirements of § 194.23(c)(6).

5. EPA's Independent Testing

Section 194.23(d) allows EPA to verify the results of computer simulations used in the CCA by performing independent simulations. This requirement also requires DOE to provide EPA with data files, source codes, executable versions of computer software for each model, other material or information needed to permit EPA to perform independent simulations, and to access necessary hardware to perform such simulations within 30 days of a request from EPA. This requirement ensures that EPA can verify calculations in the CCA and analyze the potential impact of changes to the PA calculations if changes are made to computer codes or parameters.

DOE provided EPA with unrestricted access to computer hardware required to perform simulations related to the CCA. DOE also provided EPA with access to data files, source codes, and executable computer codes for each model used in the CCA. DOE provided staff to assist EPA in executing various verification tests and sensitivity analyses with DOE hardware and software. EPA performed code verification tests on all CCA PA computer codes using CCA hardware and software. In some cases, EPA required DOE to perform additional verification tests. EPA conducted extensive parameter sensitivity tests using the same system of CCA PA computer codes. The PAVT was an independent computer simulation of the WIPP's performance conducted under EPA's authority to require independent verification computer simulations under § 194.23(d). DOE provided assistance in all of this work on a timely basis. Because DOE provided EPA with ready access to the necessary tools to permit EPA to perform independent simulations using computer software and hardware employed in the CCA,

EPA proposes to find DOE in compliance with § 194.23(d). For further information on EPA's evaluation of compliance for § 194.23, see CARD 23.

C. Section 194.24, Waste Characterization

Section 194.24, waste characterization, generally requires DOE to identify and describe quantitative information on the chemical, radiological and physical characteristics of the waste proposed for disposal at the WIPP that can influence disposal system performance. The DOE has not demonstrated compliance with all the requirements of § 194.24 as they pertain to waste characterization activities at generator sites. Therefore, EPA is proposing certification of compliance with these requirements, with the condition that DOE must submit additional information to demonstrate full compliance for waste generator sites. The proposed conditions of certification are addressed under EPA's discussion of the requirements at §§ 194.24(c)(3) through (5).

Section 194.24(a) requires DOE to describe the chemical, radiological and physical composition of all existing and to-be-generated waste, including a list of waste components and their approximate quantities in the waste. DOE described the existing waste by combining like waste streams into eleven final waste forms and waste stream profiles. A waste stream is defined by DOE as waste material generated from a single process or activity that is similar in material, physical form, isotopic make-up, and hazardous constituents. The waste stream profiles contained information on the waste material parameters, or components, that could affect repository performance. DOE extrapolated information from the existing waste streams to determine the amount of to-be-generated waste. DOE's waste profiles contained appropriate specific information on the components and their approximate quantities in the waste. Therefore, EPA proposes to find DOE in compliance with § 194.24(a).

Sections 194.24(b)(1) through (3) require DOE to analyze waste characteristics and waste components for their impact on disposal system performance. Waste components affect waste characteristics and are integral to disposal system performance. For example, the waste characteristic gas generation is controlled, in part, by the type and amount of waste components such as metal waste containers and plastic material. DOE identified waste-related elements pertinent to the WIPP as part of its screening for features, events, and processes ("FEPs"). The FEPs used in the performance assessment ("PA") served as the basis from which characteristics and associated components were identified and further analyzed. (Refer to the preamble discussion of § 194.32, "Scope of PA," for additional information pertaining to FEPs.)

DOE concluded that six characteristics were expected to have a significant effect on disposal system performance and were used in PA (i.e., parameters were identified for each): solubility, formation of colloidal suspensions containing radionuclides, gas generation, shear strength of waste, radioactivity of specific isotopes, and TRU activity at disposal. DOE identified eight waste components influencing the six significant waste characteristics: Ferrous metals, cellulose, radionuclide identification, radioactivity of isotopes, TRU activity of waste, solid waste components, sulfates, and nitrates. Finally, DOE provided a list of waste characteristics and components assessed, but determined not to be significant for various reasons such as negligible impact on PA. EPA found that DOE used a reasonable methodology to identify and assess waste characteristics and components. The analysis appropriately accounted for uncertainty and the quality of available information. Therefore, EPA proposes to find DOE in compliance with requirements in §§ 194.24(b)(1) through (3).

Section 194.24(c)(1) requires DOE to specify numeric limits on significant waste components and demonstrate that, for those limits, the WIPP complies with the numeric requirements of §§ 194.34 and 194.55. Either upper or lower limits were established for components that must be controlled to ensure that the PA results comply with the containment requirements. DOE explicitly included numeric limits, identified as fixed values with no associated uncertainty, for four waste components. Lower limits were established for ferrous and non-ferrous metals; upper limits were established for cellulosics and free water. The three components related to radioactivity and radionuclides were effectively limited by the inventory estimates used in the PA. The fixed-value limits and radionuclide inventory estimates were included in the PA calculations through parameters closely related to these components, and the results demonstrated compliance with EPA's standards. EPA concurred with DOE that it was not necessary to provide estimates of uncertainty for waste limits, so long as the PA demonstrated compliance at the fixed limits.

Explicit limits were not identified for solid waste, sulfates, and nitrates, even though DOE identified these as components significant to performance. For solid waste, EPA determined that in the PA, DOE took no credit for the potential gas-reducing effects of solid waste (i.e, assumed a lower limit of zero) and demonstrated that the WIPP would still comply. For nitrates and sulfates, EPA determined that these components would not significantly affect the behavior of the disposal system as long as cellulosics were limited. Thus, EPA concurred that it is unnecessary to specify limits for nitrates, sulfates, and solid waste. Therefore, EPA proposes to find DOE in compliance with § 194.24(c)(1).

Section 194.24(c)(2) requires DOE to identify and describe the methods used to quantify the limits of important waste components identified in § 194.24(b)(2). DOE proposed to use non-destructive assay ("NDA") (e.g., passive active neutron assay), non-destructive examination ("NDE") (e.g., radiography), and visual examination ("VE") as the methods used to quantify various waste components. The CCA described numerous NDA instrument systems and described the equipment and instrumentation found in NDE and VE facilities. DOE also provided information about performance demonstration programs intended to show that data obtained by each method could meet data quality objectives established by DOE. EPA found that these methods, when implemented appropriately, would be adequate to characterize the important waste components. Therefore, EPA proposes to find that DOE has demonstrated compliance with § 194.24(c)(2). (Implementation of measurement programs at waste generator sites is addressed below for the requirements at §§ 194.24(c)(4) and (5).)

Section 194.24(c)(3) requires DOE to demonstrate that the use of process knowledge to quantify components in waste for disposal conforms with the quality assurance ("QA") requirements found in § 194.22. EPA expected DOE to submit specific information on the process knowledge to be used at waste generator sites as part of DOE's certification application. EPA requires such information to conduct proper regulatory review of whether use of the process knowledge is appropriate and reliable. DOE provided some information on its overall plans for using process knowledge in the CCA. DOE did not, however, provide specific information on the use of process knowledge at any waste generator site in the CCA, nor did it provide information

demonstrating establishment of the required QA programs.

After submission of the CCA, EPA subsequently received information regarding process knowledge to be used at the Los Alamos National Laboratory ("LANL"). EPA determines DOE to have adequately described the use of process knowledge for retrievably stored (legacy) debris waste streams at LANL. EPA has confirmed establishment and execution of the required QA programs at that waste generator site through inspections. (See the preamble discussion of § 194.22, "Quality Assurance," for further information on inspections.) Therefore, the Agency determines that DOE has demonstrated compliance with the § 194.24(c)(3) QA requirement for LANL. EPA does not find, however, that DOE has adequately described the use of process knowledge for any other waste streams at LANL (other than the retrievably-stored (legacy) debris waste streams discussed above). Furthermore, DOE has not demonstrated compliance with § 194.24(c)(3) for any other waste generator site.

Sections 194.24(c)(4) and (5) require DOE to demonstrate that a system of controls has been and will continue to be implemented to confirm that the waste components emplaced in the WIPP will not exceed the upper limit or fall below the lower limit calculated in accordance with § 194.24(c)(1). The system of controls must conform to the QA requirements specified in § 194.22 DOE described a system of controls over waste characterization activities, such as the requirements of the TRU QA Program Plan ("TRU QAPP") and the Waste Acceptance Criteria ("WAC"). EPA found that the TRU QAPP established appropriate technical quality control and performance standards for sites to use in developing site-specific sampling plans. Further, DOE outlined two phases in waste characterization controls: waste stream screening/verification (pre-shipment) and waste shipment screening/verification (pre-receipt of waste at the WIPP). The tracking system for waste components against their upper and/or lower limits is found in the WIPP Waste Information System ("WWIS"). If implemented as proposed, EPA believes that the TRU QAPP, WAC, and WWIS are adequate to control important components of waste emplaced in the WIPP. EPA audited DOE's QA programs at CAO, SNL and WID and determined that DOE properly adhered to QA programs that implement the applicable NQA standards and requirements. (See the preamble discussion of § 194.22 for further information.) However, in the CCA, DOE did not demonstrate that the WWIS is fully functional and did not provide information regarding the specific system of controls to be used at individual waste generator sites.

After submission of the CCA, EPA subsequently received information regarding the system of controls to be used at LANL. The Agency confirmed through inspections that the system of controls is adequate to characterize waste and ensure compliance with the limits on waste components, and also confirmed that a QA program had been established and executed at LANL in conformance with NQA requirements. Moreover, DOE demonstrated that the WWIS is functional with respect to LANL—i.e., that procedures are in place at LANL for adding information to the WWIS system, that information can be transmitted from LANL and incorporated into the central database, and that data in the WWIS database can be compiled to produce the types of reports described in the CCA for tracking compliance with the waste limits. Therefore, EPA determines DOE to have demonstrated compliance with §§ 194.24(c)(4) and (5) for several waste streams in the category of retrievably stored (legacy) debris waste at LANL. EPA's proposed determination of compliance is limited to those retrievably stored (legacy) debris waste streams that can be characterized using the systems and processes audited by DOE, inspected by EPA, and found to be adequately implemented at LANL. [22] EPA does not find, however, that DOE has demonstrated compliance with § 194.24(c)(4) for any other waste stream at LANL, or with §§ 194.24(c)(4) and (5) at any other waste generator site.

In order to ship transuranic waste from other waste generator sites for emplacement at the WIPP, DOE will have to demonstrate compliance with the § 194.24(c)(3) through (5) requirements. Compliance with the requirements as they relate to QA programs will be evaluated and approved for each generator site in accordance with the language in Condition 2 ("Quality Assurance") of the proposed Appendix A to 40 CFR Part 194. To fully comply with these requirements, DOE must also submit—and EPA must approve—for each waste stream or group of waste streams, information on how process knowledge will be incorporated into waste characterization activities, and on the system of controls proposed for (a) given waste stream(s). A waste stream is defined by DOE as waste material generated from a single process or activity that is similar in material, physical form, isotopic make-up, and hazardous constituents. EPA expects that this information will be contained in site-specific documents including, for example, site certification quality assurance plans ("QAPs") and quality assurance project plans ("QAPjPs"). All such documentation submitted by DOE regarding plans for waste characterization of specific waste streams will be placed in EPA's dockets for public inspection.

As waste generator sites establish waste characterization programs for new waste streams (or groups of waste streams), EPA will assess their compliance with the §§ 194.24(c)(3) and (4) requirements. EPA will conduct an audit or inspection of a DOE audit at each site to evaluate the use of process knowledge and the establishment of a system of controls for each waste stream or group of waste streams. In order for a site to demonstrate the implementation of a system of controls, the WWIS must be demonstrated to be functional at any waste generator site before any waste stream(s) may be shipped from that site for disposal at the WIPP. By this, EPA means that a waste generator site must demonstrate that it has procedures in place for entering data into the WWIS tracking system, and that such data can be transmitted to the WWIS database so that it is available for compilation and reporting. In order for EPA to confirm that a system of controls has been adequately executed in accordance with § 194.24(c)(4), DOE must demonstrate that measurement techniques and control methods can be implemented for each waste stream or streams which DOE plans to emplace in the WIPP.

As described in the proposed certification condition, EPA's decision to approve site-specific plans for the use of process knowledge and the system of controls—and thus to approve a site to transport a waste stream for disposal at the WIPP—would be made only after public comment has been solicited and after EPA has conducted an audit or an inspection of a DOE audit of the waste generator site. Therefore, before making any determination to approve the use of process knowledge or the system of controls, EPA would publish a notice in the **Federal Register** announcing its intent to evaluate waste characterization programs for a given waste stream (or waste streams) at one or more sites. There would be allowed at least a 30-day comment period on DOE's proposed programs for process knowledge and a

[22] See Docket A–93–02, Item II–I–70 for a list of these systems and processes. They include characterization methodologies and relevant procedures, such as that used for entering data into the WWIS database.

system of controls for one or more specific waste streams.

EPA believes that approval of site specific QA programs is required by, and that this proposed procedure is consistent with the provisions of Section 194.24(c)(3)–(5) because it requires DOE to (1) demonstrate application of established and executed quality assurance programs to use of process knowledge; (2) demonstrate implementation of the required system of controls; and (3) demonstrate application of established and executed quality assurance programs to the system of controls, at the individual waste generator sites prior to shipment of wastes from such sites. EPA requests comment on whether the Agency should place a condition on its certification of compliance at WIPP consisting of future demonstrations by DOE that the §§ 194.24(c)(3)–(5) requirements have been met, prior to shipment of TRU waste to WIPP from such sites. In particular, EPA requests comment on its preliminary conclusion that the proposed procedures for determining whether adequate quality assurance programs have been established and executed by DOE are consistent with 40 CFR Part 194. However, if, based upon public comment on today's proposed action, EPA concludes that it would be appropriate to make clarifying changes to 40 CFR Part 194 that specifically set forth these procedures, EPA may do so as part of its final action on today's proposal.

EPA's written determination that DOE has demonstrated compliance with these requirements, as well as the results of any audits or inspections, would be placed in the public dockets. EPA will confirm ongoing compliance with these requirements through unfettered access to waste generator sites for the purpose of conducting inspections under its authority at §§ 194.21 and 194.24(h).

Section 194.24(d) requires DOE either to include a waste loading scheme which conforms to the waste loading conditions used in the PA and in compliance assessments, or to assume random placement of waste in the disposal system. DOE elected to assume that radioactive waste would be emplaced in the WIPP in a random fashion. DOE examined the possible effects of waste loading configurations on repository performance (specifically, releases from human intrusion scenarios) and concluded that the waste loading scheme would not affect releases. DOE incorporated the assumption of random waste loading in its performance and compliance assessments (pursuant to §§ 194.32 and 194.54, respectively).

The EPA determined that, because DOE had assumed random waste loading and also had found that potential non-random loading of waste would not affect releases, a final waste loading plan was unnecessary. EPA determined that DOE cross-referenced the resultant waste distribution assumptions from the waste loading plan with the waste distribution assumptions used in PA, and accurately modeled random placement of waste in the disposal system. Since EPA concurred with DOE that a final waste loading plan was unnecessary, DOE does not have to further comply with § 194.24(f), requiring DOE to conform with the waste loading conditions, if any, used in the PA and compliance assessment. EPA proposes to find that DOE complies with §§ 194.24(d) and (f).

Section 194.24(e) prohibits DOE from emplacing waste in the WIPP if its disposal would cause the waste component limits to be exceeded. Section 194.24(g) requires DOE to demonstrate that the total inventory emplaced in the WIPP will not exceed limitations on TRU waste described in the LWA. Specifically, the LWA defines limits for: surface dose rate for remote-handled ("RH") TRU waste, total amount (in curies) of RH–TRU waste, and total capacity (by volume) of TRU waste to be disposed. (LWA, Section (7)(a)) In order to meet the §§ 194.24(e) and (g) limits, DOE intends to rely on the TRU QAPP, WAC, and two-phase waste characterization (pre-shipment at generator sites, and pre-receipt at the WIPP). The CCA stated that the WWIS will be used to track specific data related to each of the LWA limits; by generating routine WWIS reports, DOE will be able to determine compliance with the imposed limits. The WWIS will also be used to track information on each of the important waste components for which limits were established. EPA finds that the WWIS is adequate to track adherence to the limits, and that the WWIS has been demonstrated to be fully functional at the WIPP facility; as discussed above, waste generator sites will demonstrate WWIS procedures before they can ship waste for disposal at the WIPP. Therefore, EPA proposes to find DOE in compliance with §§ 194.24(e) and (g).

Section 194.24(h) allows EPA to conduct inspections and record reviews to verify compliance with the waste characterization requirements. As discussed above, EPA intends to monitor execution of waste characterization and QA programs at waste generator sites through inspections and record reviews.

In summary, EPA proposes to find that DOE is in compliance with § 194.24, and that LANL has demonstrated compliance with §§ 194.24(c)(3) through (5) for certain retrievably stored (legacy) debris waste streams and may therefore ship TRU waste for disposal at the WIPP (as such shipments relate solely to compliance with EPA's disposal regulations; other applicable requirements or regulations still may need to be fulfilled before disposal may commence). EPA's proposed determination of compliance is limited to those retrievably stored (legacy) debris waste streams that can be characterized using the systems and processes audited by DOE, inspected by EPA, and found to be adequately implemented at LANL.

The Agency also proposes to certify compliance subject to the condition that DOE may not ship other waste streams for emplacement at the WIPP until EPA determines that (1) DOE has provided adequate information on how process knowledge will be incorporated into waste characterization activities for a particular waste stream at a generator site, and (2) DOE has demonstrated that the system of controls described in § 194.24(c)(4) has been established for the site. In particular, DOE must demonstrate that the WWIS system is functional for any waste generator site before waste may be shipped, and that the system of controls can be implemented for each waste stream which DOE plans to dispose in the WIPP. As discussed in the preamble for § 194.22 (and in Condition 2 of the proposed Appendix A to 40 CFR Part 194), DOE must also demonstrate that sites have established and executed the requisite QA programs described in §§ 194.22(a)(2)(i) and 194.24(c)(3) and (5).

The Agency proposes that the decision to allow a waste generator site to dispose of a waste stream at the WIPP will be made only after public comments have been solicited on DOE's proposed site-specific programs and after EPA has conducted an audit or an inspection of a DOE audit of the waste generator site. EPA will make available, in its public docket, the site-specific program documents being considered by the Agency, and will publish a notice in the **Federal Register** announcing its intent to evaluate such plans. There will be allowed at least a 30-day public comment period for interested parties to comment on DOE's proposed programs for process knowledge and a system of controls for one or more specific waste streams. EPA also plans to conduct an

audit or an inspection of a DOE audit at each site to evaluate the execution of such plans for pertinent waste streams.

EPA's approval of the plans relevant to compliance with §§ 194.24(c)(3) and (4) will be indicated in a letter from the Administrator's authorized representative to the Department. EPA is proposing to define the Administrator's authorized representative as "the director in charge of radiation programs at the Agency" to clarify the delegation of responsibilities described in the Compliance Criteria and in the proposed conditions of certification. A copy of the approval letter, as well as the results of any inspections, will be placed in the public dockets. After approval of the site-specific plans for characterization of (a) waste stream(s), EPA will confirm the execution of the programs at each waste generator site and continued compliance with the requirements of §§ 194.24(c)(3) through (5) through inspections and audits under its authority at §§ 194.21, 194.22(e) and 194.24(h). Results of such inspections will be made available to the public through the Agency's public dockets, as described in § 194.67.

For specific language on the waste characterization conditions of certification, see Condition 3 of the proposed Appendix A to 40 CFR Part 194; for specific language on the quality assurance requirements that relate to waste characterization, see Condition 2 of the proposed appendix. For further information on EPA's evaluation of compliance for § 194.24, refer to CARD 24.

D. Section 194.25, Future State Assumptions

Section 194.25 stipulates that performance assessments ("PA") and compliance assessments ("CA") "shall assume that characteristics of the future remain what they are at the time the compliance application is prepared, provided that such characteristics are not related to hydrogeologic, geologic or climatic conditions." The purpose of the future state assumptions is to avoid unverifiable and unbounded speculation about possible future states of society, science, languages, or other characteristics of mankind. The Agency has found no acceptable methodology that could make predictions of the future state of society, science, languages, or other characteristics of mankind. However, the Agency does believe that established scientific methods can make plausible predictions regarding the future state of geologic, hydrogeologic, and climatic conditions. Therefore, § 194.25 focuses PA and CA on the more predictable significant features of disposal system performance, instead of allowing unbounded speculation on all developments over the 10,000-year regulatory time frame.

EPA required DOE to identify and document all future state characteristics and conditions that are used in the PA and CA. For all elements of the PA and CA that do not relate to hydrogeologic, geologic or climatic conditions, DOE was required to assume that characteristics of the future remain what they are at the time the compliance application was prepared. DOE was required to document the effects of potential changes to hydrogeologic, geologic and climatic conditions on the disposal system. For geologic conditions, EPA required DOE to address dissolution, near surface geomorphic features and processes, and subsidence in the geologic units of the disposal system. For climatic conditions, EPA required DOE use current climatic conditions for comparison and to consider cycles of increased precipitation.

In accordance with § 194.25(a), DOE provided a description of the future state assumptions for the features, events and processes ("FEPs") used in the PA and CA. Except where specified otherwise (i.e., §§ 194.32 and 194.33), DOE assumed that current characteristics for the FEPS not related to hydrogeology, geology and climatic conditions will remain constant throughout the 10,000-year regulatory time frame. EPA reviewed the information in the CCA and agrees with the future state assumptions that DOE has made. EPA found this information to be inclusive of all relevant elements of the PA and CA.

To fulfill the requirements of § 194.25(b)(1), DOE predicted the potential future hydrogeologic conditions at the WIPP. DOE developed several future state assumptions about the hydrogeological conditions of the WIPP, such as increased precipitation impacts on recharge location and capacity, hydraulic gradient, and transmissivity in the Culebra member of the Rustler and Dewey Lake formations. In a few cases, DOE found that hydrogeologic conditions can change with time and can possibly affect the PA. DOE addressed these potential changes in the PA. EPA reviewed the adequacy of the uncertainty of key parameter assumptions, such as the impacts of mining subsidence on Culebra transmissivity. EPA found that DOE adequately addressed the effects of mining-induced subsidence on Culebra hydrogeologic conditions. EPA reviewed the future state assumptions DOE made about hydrogeologic conditions and concludes that DOE has accurately characterized and modeled the potential changes from current conditions. EPA found that DOE's incorporation of these changes into the PA was adequate. Other potential changes to hydrogeologic conditions, notably those associated with climate change, are addressed in the discussion of § 194.25(b)(3).

Section 194.25(b)(2) requires DOE to consider the effects of potential changes to geologic conditions on the disposal system. DOE predicted potential future geologic conditions at the WIPP. DOE analyzed the stratigraphy and physiography of undistributed geologic conditions, salt creep and excavation-induced stress changes, geochemistry, seismic activity, disturbed rock zone, dissolution, and mining in the McNutt potash zone above the repository. DOE also analyzed the geologic effects of existing boreholes, brine reservoirs, and drilling intrusions. EPA found DOE's assumptions of the future geologic conditions to cover the significant geologic units and conditions that affect PA and determined that the screening arguments adequately justify the exclusion of the majority of the geological FEPs from the PA and CA. For additional information on the FEPs included in the PA and CA, see § 194.32. EPA evaluated the CCA and additional information provided by DOE at EPA's request regarding the uncertainty associated with deep dissolution and considers DOE's analysis adequate. For additional information on both geologic and hydrogeologic conditions of the WIPP, see § 194.14(a).

Section 194.25(b)(3) requires DOE to consider the effects of potential changes to climatic conditions on the disposal system. At the WIPP, availability of water for recharge is the primary concern related to global climate change. Future global warming would be expected to continue the trend to less precipitation in the vicinity of the WIPP (which would be beneficial to disposal system performance). DOE concluded that global cooling—and increased precipitation—is the worst case scenario for the WIPP. In accordance with § 194.25(b)(3), DOE identified and described the effects of increased precipitation in future cooler climate cycles on the repository. DOE considered potential increased participation over the next 10,000 years and incorporated the uncertainty of the effects of this climate change in the PA through modeling of dissolution, groundwater flow, and potential radionuclide transport in groundwater. DOE described climate change due to

potential natural causes and the resulting changes in recharge rates, groundwater flow velocity, and flow direction. DOE included models of the impact of potential climate changes on groundwater flow in the Culebra over the regulatory time period.

EPA found that the CCA included adequate discussions of the current and previous climate at the WIPP site and found that DOE addressed the impacts of potential climate change over the regulatory time frame. EPA concludes that DOE appropriately considered climate-related factors such as precipitation, temperature, and evapotranspiration that might affect groundwater flow in the regional three-dimensional groundwater basin model. EPA also examined DOE's descriptions of recharge associated with potential climate change effects and found that DOE adequately described the uncertainties associated with potential change to the future climate cycles. For additional information on climate change ground water flow, see §§ 194.14(a) and (i).

In addition, EPA evaluated potential hydrogeologic changes related to climate change, including: groundwater recharge, Culebra flow rate variations, and water table elevation. EPA evaluated the additional information DOE provided at EPA's request regarding vertical inflow to the Dewey Lake Formation and three-dimensional groundwater flow modeling, and concluded that DOE provided adequate documentation to sufficiently address the issues. EPA verified that the CCA acknowledges and quantifies uncertainties in hydrogeologic conditions found in the site characterization data descriptions and modeling assumptions. EPA also found that DOE modeled the effects of climate changes during the next 10,000 years on the groundwater flow in the Culebra. After reviewing the CCA and the additional information provided by DOE at EPA's request, EPA concluded that DOE's explanation of uncertainty associated with the potential wetter climate impacts on Culebra transmissivities resulting from potential dissolution of fracture infillings is acceptable.

EPA determined that the overall CCA approach to dealing with uncertainty, and the examples of conservative assumptions used to compensate for uncertainty, is consistent with the FEPs list, screening arguments, and model descriptions. EPA proposes to find DOE in compliance with § 194.25. For further information on EPA's evaluation of compliance with § 194.35, refer to CARD 25.

E. Section 194.26, Expert Judgment

The requirements of § 194.26 apply to expert judgment elicitation. Expert judgment is typically used to elicit two types of information: numerical values for parameters (variables) that are measurable only by experiments that cannot be conducted due to limitations of time, money, and physical situation; and essentially unknowable information, such as which features should be incorporated into passive institutional controls to deter human intrusion into the repository. (61 FR 5228) Quality assurance ("QA") requirements in accordance with § 194.22(a)(2)(v) must be applied to any expert judgment to verify that the procedures for conducting and documenting the expert elicitation have been followed.

The requirements of § 194.26(a) prohibit expert judgment from being used in place of experimental data, unless DOE can justify that the necessary experiments cannot be conducted. Expert judgment may substitute for experimental data only in those instances in which limitations of time, resources, or physical setting preclude the successful and timely collection of data.

The CCA submitted on October 29, 1996, did not identify any expert elicitation activities. During the Agency's review of PA parameters, EPA found that inadequate explanation and information was provided on the derivation of 149 parameters identified in the CCA as resulting from professional judgment (e.g., code control parameters, physical constants). The Compliance Criteria do not provide for utilization of "professional judgment." Input parameters are to be derived from data collection, experimentation, or expert elicitation. EPA requested in letters to DOE dated March 19, April 17, and April 25, 1997, that DOE provide additional information on the derivation of the 149 parameters. (Docket A–93–02, Items II–I–17, II–I–25, and II–I–27) In the absence of data collection or experimentation, EPA expected DOE to derive these input parameters through expert elicitation.

DOE responded to EPA's requests by adding information to and improving the quality of the records stored in the Sandia Naticnal Laboratory ("SNL") Records Center to enhance the traceability of parameter values. EPA deemed the documentation provided by DOE adequate to demonstrate proper derivation of all but one of the so-called professional judgment parameters—the waste particle size distribution parameter. The remaining parameters questioned by EPA were found to have adequate documentation to support the values used in the CCA PA calculations. For further discussion of the technical review of PA parameters, see the preamble for § 194.23. EPA required DOE to use the process of expert elicitation to develop the value distribution for the waste particle size parameter. (Docket A–93–02, Item II–I–27)

The waste particle size parameter is important in the PA because it affects the quantity of radioactive materials released in spallings from inadvertent human intrusion. Because particle diameters are uncertain and cannot be estimated either directly from available data or from data collection or experimentation, the waste particle size parameter had to be based on an elicitation of expert judgment.

DOE conducted the expert judgment elicitation on May 5 through May 9, 1997. The process included: definition of technical issues; public notification; selection of experts; general orientation and elicitation training; presentation and review of issues; preparation of expert analysis by elicitor; discussion of analysis by panel members; elicitation; recomposition; review and approval of dissenting opinions provided by experts; and documentation of the process and results. The results of the expert elicitation consisted of a model for predicting waste particle size distribution as a function of the processes occurring within the repository, as predicted by the PA. This particle size distribution was incorporated in the PAVT calculations; for a detailed discussion on the sampling of uncertain parameter distributions, refer to the preamble discussion of § 194.34, "Results of PA." DOE completed a final report entitled, "Expert Elicitation on WIPP Waste Particle Size Distributions(s) During the 10,000-Year Regulatory Post-closure Period." (Docket A–93–02, Item II–I–34) EPA proposes to find that DOE complies with § 194.26(a) because the Agency found adequate support for the derivation of all parameter values with the exception of the waste particle size parameter, for which DOE undertook an expert elicitation.

EPA's review of DOE's compliance with the requirements of § 194.26 principally focused on the conduct of the elicitation process. Sections 194.26 (b) and (c) set specific criteria for the performance of an expert judgment elicitation. DOE must: identify the expert judgments used to support the compliance application; identify the experts involved in the process; describe the process of eliciting expert

judgment; document the results; document that the experts have the necessary independence and qualifications for addressing the questions and issues presented; explain the connection between the questions posed to the expert panel and the manner in which the final report of the panel is used in the compliance application; adhere to requirements on the composition of the expert panel, including the fraction of the panel members who are employed by DOE; assure the public be given the opportunity to present their views in the expert judgment process; and document the elicitation process so as to demonstrate a logical progression from the first statement of issue given to the panel to the combination and presentation in the final report.

EPA observed DOE's elicitation process and conducted an audit of the documentation prepared in support of DOE's compliance with § 194.26. The scope of the audit covered all aspects of the expert judgment elicitation process, including: panel meetings, management and team procedures, curriculum vitae of panel members, background documents, and presentation materials. EPA also assessed compliance with the QA requirements of § 194.22. EPA found that the documentation provided by DOE addressed the requirements of § 194.26(b)(2).

In accordance with § 194.26(b)(1), DOE identified the individual experts on the panel. EPA found that the expert panel was composed of six experts, including four from consulting firms and two associated with universities. Two of the six panel members were DOE contractors at the time of the elicitation.

Therefore, in accordance with § 194.26(b)(7), the panel included at least five individuals, two-thirds of whom were not employed by DOE or DOE contractors. In accordance with § 194.26(b)(3), the panel did not include individuals who will use the judgments or who maintain, at any organizational level, a supervisory role or who are supervised by those who will utilize the judgment. EPA found DOE's documentation to demonstrate compliance with these requirements.

Based on its review of curriculum vitaes and completed organizational conflict of interest forms, EPA determined that the experts on the panel demonstrated the required independence and level of knowledge required by the questions or issues presented. (§ 194.26(b)(4)) EPA found the background and orientation materials addressed the relationship among information and issues as well as the purpose and intent of the judgment, in accordance with § 194.26(b)(5). The Agency determined that the expert elicitation met the requirement at § 194.26(b)(6) since the result of the process was a parameter distribution that could be implemented directly in the PA. EPA also found that DOE afforded the public an opportunity to present scientific and technical views to the expert panel. (§ 194.26(c))

Based on the review of expert elicitation supporting documentation developed by DOE and its contractors, as well as the results of the EPA audit to verify compliance, EPA proposes to determine that DOE complies with the requirements of § 194.26 in conducting the required expert elicitation.

Numerous public comments were received on DOE's statement that it did not conduct any expert judgement activities in developing the CCA. As many commenters correctly pointed out, the CCA did not contain adequate information to allow a reviewer to ascertain whether a large number of the input parameters were properly derived in accordance with the explicit requirements of the Compliance Criteria. DOE subsequently provided additional information, and substantially improved the quality of the records at the SNL Records Center to make it possible to confirm that all but one of the suspect input parameters were adequately supported. For further discussion of EPA's evaluation of compliance with § 194.26 and related public comments, see CARD 26.

F. Section 194.27, Peer Review

Section 194.27(a) requires DOE to conduct peer review evaluations related to conceptual models, waste characterization analyses, and the evaluation of engineered barriers. This section, at §§ 194.27(b) and (c)(1), also requires DOE to submit documentation showing that the required peer reviews were conducted in a manner compatible with NUREG–1297, "Peer Review for High-Level Nuclear Waste Repositories." (Docket A–92–56, Item III–B–1h) NUREG–1297 is incorporated by reference in the Compliance Criteria. As stated in NUREG–1297, the purpose of peer review is to provide confidence in the validity of technical and programmatic judgments involving scientific uncertainty or ambiguity by subjecting those judgments to the evaluation of qualified, independent specialists. (NUREG–1297, p. 2)

DOE completed the required peer reviews and included a description of the peer review process in the CCA. EPA's CAG indicates the types of documentation necessary for § 194.27(b) to demonstrate that peer reviews were conducted in accordance with the NUREG–1297 guidance. For example, the CCA should show the process by which peer review panels deliberated, should present the conclusions they reached, and should show that panel members were qualified and free of conflicts of interest. EPA reviewed the CCA to determine whether DOE's procedures and plans for the required peer reviews were consistent with the CAG and whether the required peer reviews had actually been conducted in accordance with those procedures and plans.

Many of the documents detailing DOE's implementation of NUREG–1297 are kept by DOE as quality assurance ("QA") records and were not included in the CCA but were made available to EPA. EPA first reviewed the CCA and supplementary reports and confirmed that the required peer reviews had been conducted. To evaluate the peer review process further, EPA conducted an audit of DOE's QA records for peer review in February 1997. The audit consisted of an extensive review of DOE's records and interviews with DOE staff and contractors who managed the required peer reviews. The audit raised several isolated findings, but none of these was sufficient to lead EPA to conclude that any of the peer reviews had been conducted in a manner incompatible with NUREG–1297.

EPA proposes to find DOE in compliance with §§ 194.27(a) and (b). DOE submitted documentation in the CCA showing that the required peer reviews had been conducted. DOE's procedures for the conduct of peer review satisfactorily incorporated the essential elements of NUREG–1297, as identified in the CAG. The audit conducted by EPA verified that DOE properly followed its procedures for peer review.

Section 194.27(c)(1) requires DOE to show that the three required peer reviews, if conducted prior to promulgation of 40 CFR Part 194, were conducted in accordance with an alternative process substantially equivalent to NUREG–1297. Because DOE conducted the required peer reviews after the promulgation of 40 CFR Part 194, this requirement is not applicable.

Section 194.27(c)(2) requires DOE to document any peer reviews conducted by DOE other than those required by § 194.27(a). The additional peer reviews were not required to be compatible with the guidance in NUREG–1297, but EPA recommended in the CAG that they be documented in a manner similar to the required peer reviews. EPA expected

that documentation would be sufficient to identify the purpose, scope, membership, and findings of a given peer review.

DOE developed a list of criteria, based principally on guidance in NUREG–1297, to determine whether a review activity conducted prior to promulgation of the Compliance Criteria constituted a peer review. DOE then identified past activities that met the criteria and incorporated relevant documentation in the CCA. EPA reviewed the materials provided and found that sixteen peer reviews were properly included in the CCA. EPA also found that the CCA contained sufficient documentation to allow EPA to identify the purpose, scope, membership, and findings of those sixteen peer review activities. Therefore, EPA proposes to find DOE in compliance with § 194.27(c)(2).

Comments received in regard to peer review expressed mainly two concerns. First, commenters considered the CCA incomplete because some peer reviews were reopened after the CCA was sent to EPA in October 1996. EPA requested, received, and docketed pertinent documentation resulting from the reopened peer reviews prior to determining that the CCA was complete.

Second, commenters questioned the findings of some peer reviews. EPA's compliance review for § 194.27(b) focused on the extent to which the required peer reviews were conducted in a manner compatible with NUREG–1297. The Agency believes that the critical evaluation of peer review findings is necessary but not directly relevant to DOE's compliance with § 194.27. EPA carefully examined the findings of all peer reviews conducted after the promulgation of 40 CFR Part 194 and discusses them under the relevant technical sections: quality assurance (§ 194.22), conceptual models (§ 194.23), waste characterization (§ 194.24), passive institutional controls (§ 194.43), and engineered barriers (§ 194.44). For further information of EPA's evaluation of compliance for § 194.27, see CARD 27.

XI. Containment Requirements

The disposal regulations include requirements for containment of radionuclides. The containment requirements at 40 CFR 191.13 specify that release of radionuclides to the accessible environment shall not exceed specific limits, which are based on the amount of waste in the WIPP at the time of disposal. (§ 194.31) Assessment of the likelihood that the WIPP will meet these release limits is conducted through use of a process known as performance assessment ("PA"). The WIPP PA essentially consists of a series of computer simulations that attempt to describe the physical attributes of the disposal system (site, geology, waste forms and quantities, engineered features) in a manner that captures the behaviors and interactions among its various components. The computer simulations require the use of conceptual models that represent physical attributes of the repository. The conceptual models are then expressed as mathematical relationships, which are then translated into computer code. The results of the simulations show the potential releases of radioactive materials from the disposal system to the accessible environment over the 10,000-year regulatory time frame. (Models and computer codes are addressed in more detail in the preamble for § 194.23 of the general requirements.)

The PA must include both natural and man-made processes and events which have an effect on the disposal system. It must consider all reasonable potential release mechanisms from the disposal system and must be structured and conducted in a way that demonstrates an adequate understanding of the physical conditions in the disposal system. The PA must evaluate both human-initiated releases (e.g., via drilling intrusions) and releases by natural processes that would occur independently of human activities. The requirements at §§ 194.32 and 194.33 address the scope of PA and the types of human intrusion which must be considered in PA.

The results of PA are used to demonstrate compliance with the containment requirements in 40 CFR 191.13. The containment requirements are expressed in terms of "normalized releases" (discussed in more depth in subsequent sections of this preamble). The results of PA are assembled into complementary cumulative distribution functions ("CCDFs") which indicate the probability of exceeding various levels of normalized releases. Section 194.34 of the WIPP Compliance Criteria imposes specific statistical requirements on the results of PA and on the single curve used to judge compliance with the containment requirements.

A. Section 194.31, Application of Release Limits

Section 194.31 indicates that DOE is to quantify releases of radionuclides from the WIPP in terms of "cumulative releases," which are calculated from "release limits." Release limits for radionuclides at a radioactive waste disposal facility must be calculated in accordance with 40 CFR Part 191, Appendix A. There, a "release limit" for a radionuclide is introduced as a measure of the cumulative amount of radioactivity, measured in curies, that is allowed to reach the accessible environment (that is, land surface, the atmosphere, surface waters, oceans, and all the land beyond the boundary of the WIPP land withdrawal area) over the 10,000 years after the disposal[23] of radioactive waste. Release limits are to be calculated using the activity from radioactive waste, in curies, that will exist in the WIPP at the time of disposal.

To calculate normalized releases and release limits, DOE must first identify all the radionuclides that are present in the waste that it plans to put in the WIPP (e.g., plutonium-238). Next, the Department projects which radionuclides will be present in the waste at the time of disposal, including those isotopes created by radioactive decay between the time of the waste inventory (approximately 1995) and the time of disposal (estimated to be the year 2033). DOE then determines which of these radionuclides emit alpha-particles, have an atomic number greater than that of uranium (transuranic), and have half-lives greater than twenty years. These radionuclides comprise the "TRU component" of the waste. The total activity of the TRU component of the waste, in curies, divided by one million curies, is called the "waste unit factor." For the WIPP, Table 1 of Appendix A of 40 CFR Part 191 presents values of release limits (in curies) per unit of this "waste unit factor."

To obtain the release limit for a radionuclide, DOE must multiply each release limit value in Table 1 by the numerical value of the waste unit factor. Finally, to obtain the normalized release for a scenario, DOE must divide the projected estimated release (obtained from PA modeling), in curies, for every radionuclide (whether TRU or non-TRU) by its respective release limit, and sum these quotients.

In the CCA, the Department provided an inventory of the various radionuclides in the waste expected at the time of disposal, including those radionuclides in the waste inventory that are currently stored at different DOE sites, those radionuclides that are projected to be generated at different DOE sites between 1995 and the time of

[23] "Disposal" is defined as "[P]ermanent isolation of . . . radioactive waste from the accessible environment with no intent of recovery whether or not such isolation permits the recovery of such fuel or waste. For example, disposal of waste in a mined geologic repository occurs when all of the shafts to the repository are backfilled and sealed." 40 CFR 191.02(l)

disposal, and those radionuclides that would be created by radioactive decay between the time of the waste inventory in 1995 and the time of disposal, approximately in the year 2033. The waste inventory showed that plutonium and americium produce almost all of the radioactivity from waste that would be in the WIPP at the time of disposal. Based on the fifteen radionuclides in the inventory that were transuranic, alpha-emitting, and had half-lives greater than twenty years, DOE calculated that the relevant total activity at the time of disposal would be 3.44 million curies and that the waste unit factor would be 3.44.

DOE used the waste unit factor to obtain the release limit for each radionuclide found in Table 1 in Appendix A of 40 CFR Part 191. These release limits were then used in the calculation of cumulative releases. The Department designated six transuranic radionuclides that contributed more than 99.9 percent of the activity as "major radionuclides." The Department calculated the release limits and relative contributions to releases for the six major radionuclides using a computer program called EPAUNI. The Department verified the computer calculations with sample hand calculations.

EPA reviewed DOE's description of the procedure used to estimate the activity of waste proposed for disposal, examined DOE's hand calculations, and verified the computer code and output to determine whether DOE correctly calculated the waste unit factor, including radioactive decay up to the year 2033. EPA also evaluated whether DOE appropriately calculated release limits for each major radionuclide and identified the relative contribution of each major radionuclide.

EPA found DOE's simplification of using the six transuranic radionuclides that contribute the greatest activity in computer calculations to be appropriate. Because these six radionuclides would make up more than 99.9 percent of the activity from the transuranic waste, DOE's simplification could contribute at most an error of 0.1 percent to its calculations of the contribution to releases from individual radionuclides, which would not have a significant impact upon the calculation of release limits or the contribution to releases from individual radionuclides.

EPA found that the TRU waste component used to calculate the waste unit factor of 3.44 omitted some waste stored at an off-site facility at Savannah River. DOE corrected this error by recalculating the waste unit factor based on a TRU inventory that included the Savannah River waste; the revised waste unit factor was 3.59. EPA did not require DOE to recalculate the release limits based on the new value for the waste unit factor, because using the larger revised factor would have resulted in higher release limits (and thus, lower normalized releases). That is, the use of the incorrect value in the CCA is more conservative than using the correct value of 3.59. The correction of the error would only show that the WIPP will comply with the disposal regulations by a wider margin than had been previously demonstrated.

The Agency confirmed that the Department calculated the waste unit factor of 3.44 and the release limits at the time of disposal in accordance with the requirements of Appendix A of 40 CFR Part 191. In addition, the Agency found that the Department correctly identified the relative contribution of each major radionuclide to releases. Finally, the Agency confirmed that the computer codes, model results, and hand calculations were consistent and thus supported the use of the computer codes. Because the Agency's review concluded that the Department calculated release limits for the WIPP using an appropriate methodology and conservative waste inventory estimates, the Agency proposes that the requirements of § 194.31 have been met. For further information on EPA's evaluation of compliance for § 194.31, see CARD 31.

B. Section 194.32, Scope of Performance Assessments (PA)

Section 194.32 requires DOE to consider, in the performance assessment ("PA"), both natural and man-made processes and events which can have an effect on the disposal system. EPA expected DOE to consider all features, events and processes ("FEPs") that may have an effect on the disposal system. In particular, EPA expected DOE to consider mining effects on hydraulic conductivity, fluid injection, future development of leases and existing boreholes in the scope of the PA. The CCA was also expected to document which FEPs (or sequences or combinations of FEPs) are included in the PA. DOE is required to document the decision not to include any feature, event, or process in the PA. Deep and shallow drilling, over the regulatory time frame, are addressed in more detail in the preamble discussion of § 194.33.

To fulfill the requirements of §§ 194.32(a), (d) and (e), DOE developed and followed a process for considering FEPs in the PA. DOE initially identified 1,200 FEPs from a list of FEPs developed by the Swedish Nuclear Power Inspectorate ("SKI"). This list was compiled and categorized based on location of occurrence and cause by nine organizations world wide. DOE modified this list to make it relevant to WIPP. DOE's final list of FEPs was then classified and screened for consideration in the PA. DOE screened FEPs from consideration in the PA based on regulatory exemption, low probability and low consequence. FEPs were then combined to form scenarios. Scenarios were also screened based on regulations, probability or consequence. The remaining scenarios were retained for implementation in the PA. The CCA documents DOE's decision not to include specific FEPs in the PA.

Approximately 237 FEPs were retained for screening. DOE concluded that 17 of 72 initial natural FEPs should be retained for the PA, including stratigraphy, shallow dissolution, saturated groundwater, infiltration, precipitation, and climate change. Of 108 waste and repository-induced FEPs, DOE concluded that 51 of these should be retained for the PA, including disposal geometry, waste inventory, salt creep, backfill chemical composition, actinide solubility, spallings, and cavings. DOE concluded that 15 of the 57 human-initiated events and processes should be retained for the PA, including oil and gas exploration. Examples of FEPs screened from use in the PA include: lateral dissolution, regional tectonics, salt deformation, mechanical effects of backfill, liquid waste disposal and groundwater extraction.

EPA concluded that the initial FEP list assembled by DOE was sufficiently comprehensive, in accordance with §§ 194.32(a) and (e)(1). In compiling this list, DOE appropriately screened out events and processes on the basis of probability, consequence or regulatory requirements. DOE considered and incorporated into the PA numerous natural processes and events, mining, and deep drilling. DOE considered shallow drilling and appropriately screened it out on the basis of low consequence. (See preamble for § 194.33.)

Based on quantitative and qualitative assessments provided in the CCA and supporting documents, EPA concluded that DOE appropriately rejected those FEPs that exhibit low probability of occurrence during the regulatory period, in accordance with § 194.32(d).

Review of the CCA and the submitted supporting documents confirms that DOE used a thorough process to identify all the appropriate FEPs as well as the related combinations and sequences that can potentially occur within the

regulatory time frame and affect disposal system performance. EPA determined that the process is sufficiently documented and that DOE justified the retention and elimination of FEPs. In addition, EPA found DOE's inclusion of various scenarios in the PA to be reasonable and justified, and meets the requirement of § 194.32(e)(2). DOE provided documentation and justification for eliminating those FEPs that were not included in the PA. In some cases (e.g., fluid injection and dissolution), the CCA did not provide adequate justification or convincing arguments to eliminate FEPs from consideration in PA. (Fluid injection is discussed in more detail below, relative to compliance with § 194.32(c).) However, DOE provided supplemental information and analyses to demonstrate compliance with § 194.32(e)(3). EPA found this supplementary information to be adequate in fulfilling the requirements to justify FEP exclusion from the PA.

For disturbed scenarios (i.e., human activities), DOE discussed how mining was incorporated into the PA. DOE identified potash as the only natural resource currently being mined near the WIPP. DOE, in accordance with § 194.32(b), used the EPA-specified mining probability and considered changes in hydraulic conductivity up to 1000 times the base hydraulic conductivity of the Culebra. In its calculation of the potash area to be mined, DOE considered minable reserves inside and outside of the controlled area. The Compliance Criteria require DOE to examine only currently extractable resources, not to speculate on what other resources may become economically viable.

EPA verified, through review of the CCA and supporting documents, that DOE included, in the PA, appropriate changes in the hydraulic conductivity values for the areas affected by mining. These values for hydraulic conductivity considered the impact of institutional controls on mining, mining practices and mineral resources. The area considered to be mined for potash in the controlled area is consistent with the requirement of § 194.32(b), that the mined area be based on mineral deposits of those resources currently extracted from the Delaware Basin. EPA proposes to find that DOE complies with § 194.32(b).

EPA's review of the CCA raised questions regarding DOE's analysis, in accordance with § 194.32(c), of human-initiated activities, including fluid injection. The fluid injection scenario has been of particular concern to the public because of events that occurred in the Rhodes-Yates oil field, about 40 miles east of WIPP but outside the Delaware Basin. An oil well operator, Mr. Hartman, drilling in the Salado Formation in the Rhodes-Yates Field, encountered a salt water blowout in an oil development well. In subsequent litigation, the court found that the source of the water flow was injection water from a long-term waterflood borehole located more than a mile away.

DOE addressed the fluid injection scenario in the CCA with an analysis of waterflooding (for enhanced oil recovery) and brine disposal activities. (Docket A–93–02, Item II–G–1, Reference #611) In accordance with § 194.32(c), DOE determined that these two activities were the only fluid injection scenarios that were currently occurring or could be initiated in the near future in the vicinity of the WIPP. DOE identified the Bell Canyon Formation under the Salado and Castile Formations as the primary target for fluid injection for brine disposal. DOE stated that this scenario had the potential to produce more brine inflow to the WIPP. DOE modeled the fluid injection scenario using WIPP geology, and again using the geology identified in the Rhodes-Yates Field. The two sites differ significantly because the Castile Formation, which underlies the Salado at the WIPP, is absent in the Rhodes-Yates Field. DOE assumed that fluid injection activities would occur continuously for 50 years, and evaluated the subsequent effects of such injection activities over the entire 10,000-year regulatory time frame. The modeling results indicated that some brine could potentially get into the WIPP from fluid injection activities. However, the amount of brine from the worst case scenario (the "Rhodes-Yates" scenario) was low compared to the amount of brine expected to enter the waste area naturally. DOE thus screened out the fluid injection scenario on the basis of low consequence.

EPA's review of the CCA raised additional questions regarding DOE's screening analysis of fluid injection. EPA believes that 50 years is an accurate estimate for the life of a single oil field, but that it does not account for the possibility of multiple fields. Because drilling restrictions currently applicable to potash areas in the Delaware Basin could be lifted, it is possible that multiple oil fields could be developed in the foreseeable future near the WIPP. Based on the current resources and leases in the vicinity of the WIPP, EPA estimated that oil could still be drilled up to 150 years from now. EPA thus required DOE to extend the 50-year time frame in its models to 150 years. EPA also required DOE to use modified values for some input parameters, and to model the behavior of the disturbed rock zone consistent with assumptions used in the PA. (Docket A–93–02, Item II–I–17) Finally, EPA required DOE to provide additional information on the frequency of fluid injection well failures.

In supplemental work on fluid injection, DOE addressed all the issues identified by EPA. DOE modified the computer model grid configuration and added a new model to address concerns raised by both EPA and stakeholders. DOE researched injection well operating practices and construction in the Delaware and identified significant differences between those in the vicinity of the WIPP and the Rhodes-Yates Field. For example, wells near the WIPP are typically less than ten years old and are constructed to much higher mechanical standards than the older, less robust wells found in the Rhodes-Yates Field. DOE identified a range of well failure scenarios, from undetectable brine flow to catastrophic well failure. DOE's data indicated that the probability of a catastrophic well failure in the vicinity of the WIPP is extremely low. DOE confirmed that the presence of the Castile at the WIPP also substantially inhibits injected brine movement into the Salado anhydrite markerbeds.

Public comments on this issue included a detailed report that contradicted the DOE fluid injection modeling and indicated that fluid injection activities could overwhelm the WIPP with brine. (Docket A–93–02, Item II–H–28) EPA has reviewed the report and considers it to model conditions that are highly unrealistic for the WIPP. For example, all modeled scenarios assumed that the entire volume of brine was injected directly into the anhydrite marker beds in the Salado Formation. In addition, the report modeled the occurrence of fluid injection well beyond the time frame contemplated by § 194.32(c). The report also ignored current well construction and fluid injection operating practices, which are more robust than that used in the 45-year-old Rhodes-Yates Field.

EPA agreed with commenters that the original fluid injection screening was not adequate. Thus EPA required DOE to provide additional information and to do additional modeling. The additional modeling showed rates of brine inflow (and thus effects on the disposal system) even smaller than those estimated by the original CCA screening analysis. DOE provided documented evidence that the well construction and operating practices near the WIPP are much more robust than that in the Rhodes-Yates

well. Both DOE's research and EPA's own review of fluid injection, indicated that the probability of a long-term fluid injection well failure is below the regulatory cutoff of 1 in 10,000 over 10,000 years. Based on DOE's modeling and examination of fluid injection practices, EPA believes that a salt water blowout situation in the Rhodes-Yates Field is extremely unlikely to occur and affect WIPP's ability to contain radionuclides. Thus, EPA concurs with DOE that fluid injection is a low-probability scenario that can be screened out of the PA based on low consequence.

DOE, in accordance with § 194.32(c), also identified oil and gas exploration and exploitation, and water and potash exploration as the only near future human-initiated activities that need to be considered in the PA. DOE included and assessed the potential effects of existing boreholes as part of its FEPs screening analysis. DOE concluded that natural borehole fluid flow through abandoned boreholes would be of little consequence during current and operational phase activities. In addition, DOE screened out the occurrence of flow through undetected boreholes based on low probability.

To further address § 194.32(c), DOE assessed scenarios ranging from the effects of deep and shallow drilling and mining to undisturbed disposal system performance. DOE retained the FEPs describing both undisturbed and disturbed system performance. DOE identified the specific locations in the CCA that related to modeling of the individual FEPs. These discussions focused on conceptual model development, but often linked the conceptualizations with associated computational (computer) models.

EPA's review of the CCA and supporting documents referenced in the CCA with respect to § 194.32(c), indicated that DOE adequately analyzed the possible effects of current and future potential activities on the disposal system. However, DOE inadequately analyzed in the application some future activities in the vicinity of the disposal system, including injection of drilling fluids for brine disposal and enhanced oil recovery, solution mining, and full extraction potential of the leaseholds (in the vicinity of WIPP). In response to the concerns expressed by EPA and stakeholders, DOE conducted additional analyses and submitted follow-up information. This information was adequate and EPA concurred with the conclusions, concluding that DOE's analysis met the requirements of § 194.32(c).

In summary, EPA proposes to find DOE in compliance with § 194.32. For further information on EPA's evaluation of compliance for § 194.32, refer to CARD 32.

C. Section 194.33, Consideration of Drilling Events in PA

Section 194.33 requires DOE to make specific assumptions about future deep and shallow drilling in the Delaware Basin. Section 194.33 requires that the following assumptions be incorporated into the PA: drilling will occur randomly in space and time; the drilling rate may vary with the resources; drilling practices will remain constant for a single resource but may be different for others; and plugging practices will remain constant, but the permeability of a borehole may change with time. Deep and shallow drilling practices and related activities can directly impact the cumulative potential for contaminant release to ground, surface or geologic units.

For this requirement, EPA required DOE to discuss the resources for which deep and shallow drilling occur in the Delaware Basin. DOE was also required to describe the techniques and rates for deep and shallow drilling for each resource. In these analyses, DOE was required to document assumptions and sources of information. EPA also required DOE to document assumptions that DOE made in analyzing the consequences of drilling events in PA. Finally, DOE was required to evaluate the effects of boreholes on the properties of the disposal system.

To fulfill the requirements of § 194.33(a), DOE identified several deep and shallow drilling activities as being present in the Delaware Basin. DOE identified oil and gas exploration and exploitation, and water and potash exploration, as the principal drilling activities to be considered in the PA. The shallow drilling components of these activities were screened from inclusion in the PA because DOE considered these activities to be of low consequence to PA calculations. DOE considered three scenarios in PA for deep drilling: (1) One or more boreholes penetrate(s) the Castile brine reservoir and also intersect(s) a repository panel, (2) one or more boreholes intersect(s) a repository panel, and (3) multiple penetrations of waste panels, by boreholes of the first or second type, at many possible combinations of intrusion times, locations and combinations of borehole types. EPA found that the PA incorporated deep and shallow drilling events, in accordance with § 194.33(a).

To comply with the requirements of § 194.33(b), DOE incorporated assumptions into the PA about the severity, frequency and randomness of human intrusion. DOE considered intermittent and inadvertent drilling, including exploratory and developmental drilling, as the most severe human intrusion scenarios and used them to calculate cumulative radionuclide releases. The drilling rate is one of the most important parameters affecting compliance with the containment requirements. Using a publicly available petroleum database, DOE established the rate of future deep drilling to be 46.8 boreholes per square kilometer per 10,000 years. EPA found that DOE identified the number of deep drilling events for each resource, and that sources of information used to do so were thorough and appropriate. (The rate of shallow drilling in the Delaware Basin was not needed because, as noted above, shallow drilling was screened from inclusion in the PA based on low consequence.) DOE applied the deep drilling rate in the PA by randomly sampling with respect to: (1) The location of a borehole in the repository footprint, and (2) the time of occurrence during the regulatory time frame. EPA therefore proposes to find DOE in compliance with § 194.33(b).

DOE evaluated, in accordance with § 194.33(c), the consequences of drilling events assuming that drilling practices and technology remain consistent with practices in the Delaware Basin at the time the certification application was prepared. DOE evaluated borehole drilling and borehole seal degradation for their effects on properties of the disposal system and their impact on radionuclide migration and transport. DOE determined that boreholes can impact radionuclide migration and transport through cuttings, cavings, spallings and direct brine releases. In addition, DOE considered the effects of borehole degradation and its impact on the permeability of borehole plugs.

EPA and public commenters disagreed with the constant value DOE used in the PA for the short-term (up to 200 years after disposal) borehole plug permeability. EPA therefore directed DOE to use a range of borehole plug permeabilities when conducting the EPA-mandated Performance Assessment Verification Test ("PAVT"). While EPA's sensitivity analysis indicated that the short-term plug permeability affected some performance measures, the results of the PAVT demonstrated that the range of short-term plug permeability values, compared to the long-term borehole permeability, had little impact on the results of modeling.

EPA and public commenters also disagreed with DOE's use of a small range of values for the long-term borehole plug permeability. (Docket A–93–02, Item II–I–17) For example, one commenter asserted that DOE should evaluate both "perfect plugs" (i.e., low permeability) and plugs that "fail" (i.e, very high permeability). (Docket A–93–02, Item II–E–34, comment #113) In the PAVT, the long-term borehole plug permeability was changed so that the sampled parameter range included both low and high permeability values to simulate perfect plugs and borehole plug failure, respectively. Low permeability plugs did increase releases by increasing repository pressure and allowing more spallings and direct brine releases. However, the PAVT results indicated that changing the long-term borehole permeability, in combination with several other changes requested in public comments (notably those related to pressurized brine pockets), still would not cause predicted releases to violate the containment requirements; this indicates that the original CCA parameter values were acceptable for comparison to the containment requirements. (See preamble discussion of § 194.34 for further information on the PAVT.)

EPA reviewed the information contained in the CCA and concluded that DOE demonstrated that the effects of drilling events have been adequately considered. EPA found that the documentation in the CCA demonstrated that DOE thoroughly considered deep and shallow drilling activities and rates within the Delaware Basin. EPA found that DOE appropriately screened out shallow drilling from consideration in the PA. EPA also found that DOE appropriately incorporated the assumptions and calculations for drilling into the PA as stipulated in §§ 194.33(b) and (c). EPA determined that the PA models did not incorporate the effects of techniques used for resource recovery, in accordance with § 194.33(d). EPA further concludes that the information in the CCA is consistent with available data. EPA proposes to find DOE in compliance with the requirements of § 194.33. For further information on EPA's evaluation of compliance for § 194.33, see CARD 33.

D. Section 194.34, Results of PA

The containment requirements at § 191.13 indicate that a disposal system is to be tested through a PA that predicts the likelihood of occurrence of all significant processes and events that may disturb the disposal system and affect its performance, and that predicts the ability of the disposal system to contain radionuclides. Section 194.34 of the Compliance Criteria provides specific requirements for presenting the results of the PA for the WIPP.

The restriction on releases of radioactive material is expressed in terms of "normalized releases" or "cumulative releases." Normalized releases refer to amounts of radioactivity projected (by means of the mathematical models of the PA) to be released from the repository over 10,000 years under various physical conditions and intrusion scenarios. To calculate the normalized release for a given intrusion scenario, one first obtains the normalized release separately for each individual radionuclide; this involves dividing the amount projected to be released, in curies, by its radionuclide-specific release limit, as calculated in accordance with Appendix A of 40 CFR Part 191. (See the discussion of release limits for § 194.31 in today's preamble.) One then adds together the normalized releases for all radionuclides to determine the overall normalized release for the scenario. Section 191.13 requires that a disposal system be designed so that there is reasonable assurance that cumulative releases (1) have a probability of less than one in ten (0.1) of exceeding the calculated release limits, and (2) have no more than a one in one thousand (0.001) chance of exceeding ten times the calculated release limits.

Section 194.34 requires DOE to use complementary cumulative distribution functions ("CCDFs") to express the results of the PA. The Department also must document the development of probability distributions, and the computational techniques used for drawing random samples from these probability distributions, for any uncertain parameters used in PA. The PA must include a statistically sufficient number of CCDFs; in particular, the number of CCDFs must be large enough to ensure that the maximum CCDF curve exceeds the 99th percentile of the population of CCDFs, with at least a 95 percent probability, at the specific values of 1 and 10 for normalized releases. The CCA must display the full range of CCDFs generated. Finally, the CCA must demonstrate that the mean of the population of CCDFs meets the containment requirements of § 191.13 with at least a 95 percent level of statistical confidence.

EPA found that the CCA PA demonstrated that the WIPP meets the containment requirements of § 191.13 by more than an order of magnitude in probability. The largest release at any point on the mean CCDF curve was a normalized release of only 0.3. The PA calculations indicated no cases where cumulative releases would be ten times greater than the release limits.

In the process of reviewing the CCA, the Agency and public commenters raised concerns about certain assumptions and specific parameter values incorporated into the PA. Also, DOE found some coding problems in the PA computer software. The Agency therefore directed the Department to conduct additional modeling that included corrections to computer coding problems and modifications to parameter values and distributions. The PAVT also excluded the assumption of credit for passive institutional controls. EPA required this additional modeling in the PAVT in order to determine whether the cumulative impact of the changes in the PA codes and parameters would be small enough that the WIPP would still meet the containment requirements of § 191.13. (For further discussion of parameter values, see the discussion of parameters in the preamble for § 194.23.) The results of the PAVT showed somewhat higher cumulative release values than the original CCA PA. However, even these higher cumulative release values were more than an order of magnitude lower than the containment requirements, at the probability levels prescribed by § 191.13. Based upon the results of the CCA PA and the PAVT, EPA proposes to find that the WIPP meets the containment requirements of § 191.13.

Further discussion of the specific compliance criteria of § 194.34 follows.

1. Complementary Cumulative Distribution Functions (CCDFs)

Section 194.34(a) requires DOE to report the results of the PA in the form of "complementary, cumulative distribution functions" ("CCDFs"), which may be presented graphically as a set of curves. A CCDF curve presents the probability that releases from the repository, caused by all significant processes and events, might exceed any particular level of cumulative (normalized) release. That is, a point on a CCDF curve displays, on the vertical axis, the relative number of release scenarios or "futures" that could result in calculated releases larger than the corresponding normalized release value found on the horizontal axis. Each CCDF curve starts with a maximum probability of one on the left side of the graph (i.e., there is a 100% probability that cumulative releases from the disposal system will be either zero or greater, and will not take on negative values); and then decreases toward the right as the normalized release becomes

larger, and as relatively fewer simulations yield releases that exceed the corresponding normalized release value.

Each CCDF curve in the CCA is calculated using 10,000 simulations or "futures," each of which models a ten-thousand year period in which a series of human intrusion events may occur. (For further information about how the possible effects of human intrusion are included in the PA, see the preamble discussions of §§ 194.32 and 194.33.) A single CCDF curve uses a fixed set of uncertain physical, chemical and geologic characteristics at the WIPP and its surroundings, but uses 10,000 different, randomly-determined sequences of intrusion events. Different CCDF curves are developed by using different information about the uncertain physical, chemical and geologic characteristics of the WIPP and its surroundings. The CCA PA included 300 different CCDF curves so that, in all, it calculated normalized releases for three million different possible futures.

EPA reviewed features, events and processes, scenarios, conceptual models and computer codes that support CCDF generation. EPA found that all significant features, events and processes and scenarios were included in the generation of CCDFs. (See preamble discussions of §§ 194.32 and 194.33 for more detailed information on EPA's evaluation of PA scenarios.) DOE used the same approach in calculating and presenting results of the Performance Assessment Verification Test ("PAVT").

The Agency found that DOE assembled the results of the CCA PA and the PAVT into CCDFs incorporating all significant processes and events. Therefore, the Agency proposes to find DOE in compliance with the requirements of § 194.34(a).

2. Generation of the Full Range of CCDFs

Section 194.34(e) requires the CCA to display the full range of CCDFs generated. The CCA included all three hundred CCDFs. These were presented in three graphs, one for each replicate of one hundred CCDF curves. In addition, DOE provided summary CCDF curves for descriptive statistics. DOE generated a mean CCDF curve, 95th-percentile confidence bound curves for the mean, a 10th percentile curve, a median curve, and a 90th percentile curve for each replicate, and generated a mean curve and 95th-percentile confidence bound curves for the mean of all three replicates. The Department also provided the same information for the PAVT.

EPA determined that the CCA displayed the full range of CCDF curves over the full range of CCDF values and displays normalized releases relevant to the determination of DOE's compliance with § 194.34(e). EPA also concluded that DOE applied the same methodology to the PAVT for displaying the full range CCDF curves over the full range of probabilities and normalized releases. Therefore, EPA proposes to find that DOE has demonstrated compliance with § 194.34(e).

3. Probability Distributions and Random Sampling of Uncertain Parameters

Section 194.34(b) requires DOE to develop and document probability distributions for uncertain disposal system parameter values used in PA. Section 194.34(c) requires DOE to use and to document computational techniques which draw random samples from across the entire range of these probability distributions to generate CCDFs.

Parameters are numerical values or ranges of numerical values used to describe different physical and chemical aspects of the repository, the geology and geometry of the area surrounding the WIPP, and possible scenarios for human intrusion. Some parameters are well-established chemical and physical constants, such as Avogadro's Number or the Universal Gas Constant. Other parameters describe characteristics unique to the WIPP, such as the solubility and mobility of specific actinides in brines in the WIPP. It is not possible to determine a single, constant value to describe particular characteristics of the WIPP, in which case one must consider a range of values. The relative probabilities of occurrence of different uncertain parameter values within that range can be presented as a mathematical expression known as a probability distribution. A probability distribution may be described in terms of statistical parameters such as the average (mean), median, maximum and minimum values of the parameter, or standard deviation. Section 194.34(b) requires development and documentation of these probability distributions.

DOE selected 57 uncertain parameters whose values were to be obtained through random sampling in the PA. DOE also performed a sensitivity analysis to show if changes to some parameter values would affect the results of PA.

The uncertainty in the value of a parameter is built into PA computer codes by programs that "sample," or select, numeric values from within the probability distribution for that parameter. Section 194.34(c) requires these sampling techniques to draw random samples from across the entire range of each probability distribution. This requirement ensures that PA calculations fully consider the possible extremes of calculated releases of radioactivity without systematically underestimating or overestimating releases.

The Department used the Latin Hypercube Sampling ("LHS") code to sample the parameter distributions related to physical, chemical and geologic conditions of the repository and its surroundings. DOE used Monte Carlo-type random sampling to determine the effects of human intrusion through drilling or mining. Both codes select values from across the entire range of the probability distributions. The LHS code requires fewer samples to cover the entire range of the distribution because it samples randomly within divisions spread across the entire probability distribution.

EPA reviewed the parameters used in the modeling, the probability distributions for the sampled parameters and DOE's sensitivity analysis. As a result of its review, the Agency found that 58 parameter values and distributions were not well supported by the data available. (See the preamble discussion of § 194.23 for further details on EPA's review of parameters.) EPA performed its own sensitivity analysis on some parameters to determine if uncertainties in the parameter values of concern would have a significant impact on the PA. The Agency concluded that many of the parameters of concern had little impact, but twenty-four parameters could significantly affect the PA results, either individually or in combination with other parameters.

As a result of the parameter review, EPA requested that DOE perform additional modeling. This additional modeling, the PAVT, included, among other things, parameter value and distribution modifications to twenty-four parameters that the Agency believed might have a significant impact on the results of PA. DOE conducted the PAVT using the same computer codes and the same sampling methodologies as for the CCA PA, but changed the 24 parameters in accordance with EPA's direction and modified some of the computer codes in response to EPA's questions about the codes. DOE conducted 300 simulations for the PAVT, resulting in 300 CCDF curves, just as for the CCA PA. The results of the PAVT showed higher normalized releases than those in the CCA PA, but were still more than an order of

magnitude below the containment requirements at § 191.13. Thus, the PAVT incorporated changes that addressed EPA's concerns about PA, and showed that the resulting releases were still within the containment requirements. Because the PAVT used identical technical methods to the CCA PA, EPA concludes that the PAVT results are numerically equivalent to those that would be obtained by performing a new PA incorporating the changes required in the PAVT. EPA believes that the PAVT verifies that the original CCA PA was adequate for comparison against the radioactive waste containment requirements.

Because DOE has developed and documented the probability distributions for uncertain disposal system parameter values used in the PA, EPA proposes to find the DOE to be in compliance with § 194.34(b). After reviewing the results of sensitivity analyses and of the PAVT, the Agency concludes that the probability distributions are adequate. The Agency found that the LHS and Monte Carlo sampling techniques draw random samples from across the entire ranges of the probability distributions used for the uncertain disposal system parameters in the PA. The use of these computational techniques are documented in the CCA. Therefore, EPA proposes to find that DOE has demonstrated compliance with § 194.34(c).

4. Sufficient Number of CCDFs Generated

Section 194.34(d) requires DOE to generate a sufficiently large number of CCDF curves to ensure that, at cumulative releases of 1 and 10, the maximum CCDF exceeds the 99th percentile of the population of CCDFs with at least a 95-percent probability. Section 194.34(d) also requires DOE to calculate cumulative release values according to Note 6 of Table 1 in Appendix A of 40 CFR Part 191.

The PA process uses techniques based upon probability theory to calculate the potential for releases. Because of the many sources of uncertainty, a computer model could calculate results of billions of situations without exhausting every possibility. However, running billions of simulations is not feasible given the cost and time involved. Furthermore, this is not necessary in order to provide a reasonable expectation that a disposal system will contain waste and protect human health and the environment. So long as the PA includes a large enough number of randomly-produced simulations covering the full range of possible calculated release values, the results of PA will yield a valid result that shows whether or not a disposal system meets the containment requirements of § 191.13. (61 FR 5230) Section 194.34(d) provides a statistical test to determine if the CCA contains enough CCDF curves: there must be at least a 95 percent probability that the CCDF curve generated in PA with the highest cumulative release exceeds the 99th percentile of the entire population of CCDFs (that is, the full range of possible calculated release values).

As was mentioned above in this section, each CCDF is generated using a specific set of sampled values from distributions of uncertain parameters related to the physical, chemical and geologic conditions of the repository and its surroundings. In the case of the WIPP, the CCA PA included three sets or replicates of one hundred CCDF curves, for a total of 300 CCDF curves. Each of the CCDF curves is based upon a sample of 57 uncertain parameters.

DOE used the LHS code to take samples of the parameter values. The Department also presented a probabilistic analysis, based on the definition of the 99th percentile, and determined that there would be a 0.95 probability that at least one CCDF curve will exceed the 99th percentile so long as the PA includes at least 298 CCDF curves. Since the CCA PA included 300 CCDF curves, DOE concluded that this was enough CCDF curves to meet the requirements of § 194.34(d).

EPA agreed with DOE's argument based upon probability and the definition of the 99th percentile, and concluded that the CCA PA generated a sufficient number of CCDFs. As another approach to evaluating compliance with § 194.34(d), EPA also examined the statistical characteristics of the 300 CCDF curves in the CCA PA. EPA compared the CCDF curves in the CCA PA to a statistical distribution that the Agency believes is a plausible description of what the entire population of all possible CCDFs would produce. EPA found that the maximum CCDF curve in the CCA PA had a higher cumulative release than the 99th percentile predicted using the probability distribution which represents the entire population of CCDFs. Based upon this statistical analysis, the Agency concluded that there was at least a 95 percent probability that the maximum CCDF curve would exceed the 99th percentile of the population of CCDFs.

Section 194.34(d) also requires PA to calculate cumulative release values according to Note 6 of Table 1 in Appendix A of 40 CFR Part 191. DOE's approach to calculating cumulative release (or "normalized release") values is described in the introduction to this section of the preamble. EPA found DOE's approach to be consistent with Note 6 of Table 1 in Appendix A of 40 CFR Part 191.

EPA found that DOE generated 300 CCDF curves in the PA, using the appropriate method to calculate cumulative releases, as specified in Note 6 of Table 1 in Appendix A of 40 CFR Part 191. Because of the statistical arguments described above, EPA is satisfied that the number of CCDFs is large enough such that, at cumulative releases of 1 and 10, the maximum CCDF generated exceeds the 99th percentile of the population of CCDFs with at least a 0.95 probability. Therefore, EPA proposes to find that DOE has demonstrated compliance with § 194.34(d).

5. Compliance of the Mean CCDF

Section 194.34(f) requires the CCA to demonstrate that the mean of the population of CCDFs meets the containment requirements of § 191.13 with at least a 95 percent level of statistical confidence. This statistical demonstration allows DOE to demonstrate compliance using a finite number of CCDFs, rather than having to generate the entire (infinitely large) population of CCDFs.

In order to meet the requirements of § 194.34(f), DOE must calculate the mean CCDF curve from all 300 CCDF curves generated in the CCA PA, must compute the 95 percent confidence limits for that overall mean curve, and must compare the 95 percent upper confidence limit CCDF curve to the containment requirements of § 191.13. The DOE must show that the mean of its 300 CCDF curves, and the 95th percentile upper confidence limit on the mean, both lie below a probability of 0.1 at a cumulative release value of 1, and lie below a probability of 0.001 at a cumulative release value of 10.

In the CCA, DOE presented the steps used in its PA to generate the 300 CCDF curves. DOE also showed how it then calculated the mean of all CCDFs, by first computing the mean CCDF for each of the three replicates of 100 curves, and then averaging those three mean CCDF curves. Using the three mean CCDF curves, DOE calculated the 95 percent confidence limits for the overall mean CCDF curve. DOE identified the mean of all CCDFs generated and the 95 percent confidence limits and showed that both the mean CCDF and the CCDF for the upper confidence limit satisfy the containment requirements by more than an order of magnitude.

EPA examined DOE's calculations of the mean CCDF curve and the CCDF curve for the 95 percent confidence limit on the mean, and found that they were appropriate and were correctly executed. EPA concurred with DOE's conclusion that both the mean CCDF and the CCDF for the upper confidence limit satisfy the containment requirements by more than an order of magnitude.

As discussed above, EPA was dissatisfied with many of the parameter ranges and values used in PA and had concerns about some codes and the assumption of credit for passive institutional controls. EPA required DOE to perform the PAVT to determine whether the cumulative impact of the changes in PA codes and parameters would require additional PA runs. DOE applied the same methodology in the CCA PA and in the PAVT for calculating the mean CCDF curve and the 95 percent upper confidence limit. The PAVT results demonstrate that the level of statistical confidence is significantly greater than 95% that the mean of the CCDFs meets the § 191.13 containment requirements. Therefore, EPA concludes that the final results of the PAVT are also in compliance with the containment requirements of § 191.13 and that the results are presented in accordance with § 194.34(f).

A public comment received on EPA's Advance Notice of Proposed Rulemaking (ANPR) expressed concern about the fact that at least some of the CCDF curves in the CCA PA indicated that there would be releases into the accessible environment. EPA's containment requirements limit the likelihood of releases at specific levels, but do not require DOE to demonstrate that no releases of any magnitude will occur. EPA recognized that some parameters used in CCA PA were questionable, and required DOE to perform a PAVT that included revised parameters in order to alleviate concerns such as those raised by the commenter. Less than one percent of CCDF curves in the CCA PA exceeded normalized releases of one. EPA concludes that the probabilities of such releases are still well below the EPA release limits.

The CCA demonstrates that there is at least a 95 percent level of statistical confidence that the mean of the population of CCDFs meets the containment requirements of § 191.13. (The PAVT results indicate that PA would still demonstrate that the WIPP is in compliance with the containment requirements of § 191.13, even including substantial modifications to some of the significant uncertain parameters used in PA.) Therefore, EPA proposes that the WIPP complies with the containment requirements of § 191.13 and with § 194.34(f). EPA believes that the WIPP will safely contain radioactive waste for up to 10,000 years after disposal and will protect public health and the environment. For further information on the EPA's evaluation of compliance for § 194.34, or on the results of the PA or the PAVT, see CARD 34.

XII. Assurance Requirements

In 40 CFR 191.14, EPA included six qualitative assurance requirements to assure that the desired level of protection is achieved at disposal facilities. (60 FR 5777) The assurance requirements address active institutional controls, monitoring, passive institutional controls, engineered barriers, consideration of the presence of resources, and removal of waste. These measures are designed to compensate for the inherent uncertainty in projecting the behavior of natural and engineered components of the repository for many thousands of years. (50 FR 38072) The assurance requirements are implemented at the WIPP by §§ 194.41 through 194.46 of the WIPP Compliance Criteria.

A. Section 194.41, Active Institutional Controls

Section 194.41 implements the active institutional controls ("AICs") assurance requirement. The disposal regulations define AICs as "controlling access to a disposal site by any means other than passive institutional controls, performing maintenance operations or remedial actions at a site, controlling or cleaning up releases from a site, or monitoring parameters related to disposal system performance." (40 CFR 191.12) Section 194.41 requires AICs to be maintained for as long a period of time as is practicable after disposal; however, contributions from AICs may not be considered in the PA for more than 100 years after disposal.

In evaluating DOE's compliance with § 194.41, EPA sought a detailed description of DOE's proposed AICs and how those controls would be implemented. EPA reviewed this description for thoroughness, feasibility, and likely effectiveness. DOE proposed to: construct a fence and roadway around the surface footprint of the repository; post warning signs; conduct routine patrols and surveillance; and repair and/or replace physical barriers as needed. DOE also identified other measures that function as AICs, such as DOE's prevention of resource exploration at the WIPP and DOE's construction of long-term site markers. DOE stated that it would maintain the proposed AICs for at least 100 years after closure of the WIPP, and that the WIPP PA assumed that AICs would prevent human intrusion for that period.

EPA reviewed the proposed AICs in connection with the types of activities that may be expected to occur in the vicinity of the WIPP site during the first 100 years after disposal (i.e., ranching, farming, hunting, scientific activities, utilities and transportation, groundwater pumping, surface excavation, potash exploration, hydrocarbon exploration, construction, and hostile or illegal activities). EPA also examined the assumptions made by DOE to justify the assertion that AICs will be completely effective for 100 years. The assumptions were that: (1) The fence and signs will convey the message that the WIPP site is hazardous and protected; (2) legal prohibitions on resource recovery activities will be enforced; and (3) the time required to initiate a resource extraction operation will allow routine site patrols to discover and halt such activities.

EPA found the assumptions regarding longevity and efficacy of the proposed AICs to be acceptable. This finding was based on the fact that the types of inadvertent intrusion which AICs are designed to obviate are not casual activities, but require extensive resources, lengthy procedures for obtaining legal permission, and substantial time to set up at the site before beginning.

Section 194.41 prohibits the consideration of contributions from AICs in the PA for more than 100 years after disposal. Contributions from AICs in the PA are considered as a reduction in the rate of human intrusion. EPA reviewed the CCA and the parameter inputs to the PA and determined that DOE did not assume credit for the effectiveness of active institutional controls for more than 100 years after disposal.

EPA found the description of each active control measure (fence, signs, roadways, site maintenance, and security patrols) and its location to be adequate to support its intended function. Also, EPA found DOE's assumptions to be sufficient to justify DOE's assertion that AICs will completely prevent human intrusion for 100 years after closure. Because DOE adequately described the proposed AICs and the basis for their assumed effectiveness and did not assume in the PA that AICs would be effective for more than 100 years, EPA proposes to find DOE in compliance with § 194.41. For further information on EPA's

evaluation of compliance for § 194.41, refer to CARD 41.

B. Section 194.42, Monitoring

Section 194.42 implements the assurance requirement that DOE monitor the disposal system to detect deviations from expected performance. The monitoring requirement distinguishes between pre- and post-closure monitoring because of the differences in the monitoring techniques that may be used during operations (pre-closure) and once the repository has been backfilled and sealed (post-closure). Monitoring is intended to provide information about the repository that may affect the results of the PA or containment of waste.

To meet the criteria of § 194.42, EPA required DOE to conduct an analysis of the effects of disposal system parameters on the containment of waste. At a minimum, this analysis must include the seven specific parameters listed in § 194.42(a). DOE was required to present the analysis methodology, assumptions and results. DOE also was required to justify the decision not to monitor any of the parameters analyzed. (§ 194.42(b))

Section 194.42 requires that the screening of parameters be conducted to develop plans for pre- and post-closure monitoring described in §§ 194.42(c) and (d). In accordance with § 194.42(e), these monitoring plans must: (1) identify the parameters to be monitored and how the baseline data will be determined, (2) indicate how the parameters will be used to evaluate deviations from the expected performance of the disposal system, and (3) discuss the length of time over which each parameter will be monitored.

DOE conducted an analysis of disposal system parameters that included the parameters specified in § 194.42(a), along with other parameters. The analysis assigned high, medium or low significance to each parameter for its importance to the containment of waste and to the verification of predictions about disposal system performance. DOE then screened parameters out of consideration for monitoring based on the ability of the parameter to produce meaningful data during the monitoring period and on whether parameters can be monitored without violating disposal system integrity.

EPA evaluated the analysis and screening of parameters, including the methodology, assumptions, and results. EPA found that the analysis included the required parameters and adequately justified both the selection and rejection of parameters for inclusion in monitoring plans. Therefore, EPA proposes to find DOE in compliance with §§ 194.42(a) and (b).

Based on the results of its analysis, DOE submitted plans that identified ten parameters that will be monitored for pre-closure monitoring, five of which will also be monitored for post-closure monitoring. The pre-closure monitoring parameters are: (1) Culebra groundwater composition, (2) change in Culebra groundwater flow, (3) probability of encountering a Castile brine reservoir, (4) drilling rate, (5) subsidence measurements, (6) waste activity, (7) creep closure and stresses, (8) extent of deformation, (9) initiation of brittle deformation and (10) displacement of deformation features. Parameters one through five are also post-closure monitoring parameters. The parameters selected for monitoring included several of those listed in § 194.42(a), such as creep closure and stresses, extent of deformation, initiation of brittle deformation, displacement of deformation features, Culebra ground water composition and flow and Castile brine reservoir location.

The CCA described how DOE intends to implement monitoring programs for both pre-and post-closure parameters. The monitoring plans included information on establishing baseline data, how monitoring data will be used to evaluate deviations from expected performance and on the length of time each parameter will be monitored. EPA finds that DOE submitted monitoring plans in accordance with §§ 194.42(c), (d), and (e). The monitoring plans in the CCA addressed both pre-closure monitoring (planned to begin before emplacement of waste) and post-closure monitoring (using methods that would not jeopardize containment of waste in the disposal system), and included information required by the Compliance Criteria.

EPA proposes to find DOE in compliance with the requirements of § 194.42. In accordance with its authority under § 194.21, EPA intends to conduct an inspection of the pre-closure monitoring activities prior to emplacement of waste to confirm implementation of the plans detailed in the CCA. The results of this inspection will be placed in the public dockets described under § 194.67. For further information on EPA's evaluation of compliance for § 194.42, see CARD 42.

C. Section 194.43, Passive Institutional Controls

The Compliance Criteria at § 194.43 require a description of passive institutional controls (PICs) that will be implemented at the WIPP. PICs are measures that do not require human intervention in order to warn away potential intruders from disposal sites. EPA defined PICs in the disposal regulations as markers, public records and archives, government ownership of a site and restrictions on land use at the site, and any other means of preserving knowledge of a site. (50 FR 38085) PICs are intended to deter unintentional intrusions by people who otherwise might not be aware of the presence of radioactive waste at the site.

Sections 194.43(a)(1) through (3) of the Compliance Criteria implement the disposal regulations by requiring DOE to: (1) identify the controlled area by markers designed, fabricated, and emplaced to be as permanent as practicable; (2) place records in local, State, Federal, and international archives and land record systems likely to be consulted by individuals in search of resources; and (3) employ other PICs intended to indicate the location and dangers of the waste. In accordance with § 194.43(b), DOE also must indicate the period of time that PICs are expected to endure and be understood by potential intruders. Finally, DOE is permitted to propose a credit for PICs in the PA, as explained in § 194.43(c). Such credit must be based on the proposed effectiveness of PICs over time, and would take the form of reduced likelihood in the PA of human intrusion over several hundred years. The Compliance Criteria prohibit DOE from assuming that PICs could entirely eliminate the likelihood of future human intrusion.

The PICs design proposed by DOE in the CCA calls for the construction at the WIPP site of a large earthen berm, dozens of granite monuments, and three granite information rooms, two of which will be buried for their protection. DOE also proposed to bury thousands of small markers at shallow depths around the site. All markers except the berm will be engraved with warning messages in several languages and of varying complexity.

DOE plans to distribute WIPP records and other information to over one hundred archives, record centers, professional organizations, and commercial enterprises in the United States and abroad. Finally, DOE points to its ownership of the WIPP site as a measure that will identify the site as Federal property and off limits to resource exploration.

EPA evaluated whether the proposed markers are "as permanent as practicable" by considering the manner in which DOE accounted for potential marker failures and by confirming that

the proposed markers could be fabricated. EPA's analysis of the proposed markers suggests that they are practicable, although DOE may decide to revise the design as implementation proceeds. Any such revisions would constitute a modification of the design and would therefore require EPA approval in accordance with §§ 194.65 and 194.66. Also, the CCA showed that the proposed design incorporates features intended to promote the endurance of markers. Examples of these features are: redundant markers, highly durable materials with low intrinsic value, large dimensions, and location both above and below the surface. EPA proposes to find that the proposed markers are designed to be as permanent as practicable, in accordance with § 194.43(a)(1).

With regard to placement of records, DOE has prioritized archives and record centers in order to target those closest to the WIPP and most likely to be consulted by resource exploration industries nationally and abroad. The additional PICs proposed by DOE, which involve placement of WIPP information on maps and in various reference materials, also appear to be practicable. Therefore, EPA proposes to find that DOE complies with §§ 194.43(a)(2) and (3).

DOE estimated the amount of time that most of the proposed PICs are expected to endure by comparing them to analogues with similar properties that have survived to the present. The estimates of endurance, the lowest of which is at least 2,400 years and the greatest of which is at least 5,000 years, vary according to the age of analogues. DOE estimated the length of time that messages and records are expected to be understood (at least 1,000 years) by making assumptions about the future and then stating why those assumptions are reasonable. Because DOE based its design on sound principles, took into account likely failures of PICs, based estimates of endurance on relevant analogues, and based estimates of comprehensibility on a reasonable framework of assumptions, EPA believes that the proposed design for markers meets the criterion of "as permanent as practicable" and that DOE's estimates for that purpose are acceptable for compliance with § 194.43(b).

DOE proposed to take most of the steps necessary for implementing the proposed PICs, such as making arrangements with archives and record centers and refining marker messages, during the WIPP's operational period. However, DOE also plans to extend some activities, particularly testing of markers, over nearly 100 years after closure (i.e., during the proposed active institutional control period) before finalizing important aspects of the design, in the belief that future technology may improve the design. EPA cannot base a regulatory determination that DOE has demonstrated compliance with the requirements at § 194.43 on a speculative plan to finalize the required design during the active institutional control period. It would be inconsistent with Congress' intent in the LWA for EPA to allow DOE to alter the approved PICs design after EPA's regulatory function comes to an end.

Rather, EPA's determination must be based on the design proposed in the CCA. EPA acknowledges that future technological developments might improve the design of certain PICs components. Should DOE develop evidence that aspects of the proposed design can be improved during the operational period, DOE could then request modification of the approved plan in a recertification application. DOE also will not be precluded in the future from implementing other measures in addition to those comprising the final design. During the period that EPA exercises regulatory oversight over the WIPP, DOE may not alter or delete aspects of the approved plan in the CCA without notifying EPA and subjecting the certification to modification, if EPA deems it necessary.

Given that EPA considered the design proposed in the CCA to be final for the purposes of its compliance review, EPA finds that DOE has not justified sufficiently the need for additional testing of markers after closure of the repository or the need to delay implementation for many years after closure. EPA believes that PICs should be implemented as soon as possible after the WIPP facility is sealed, and that measures necessary to prepare for such implementation should be accomplished during the operational period for the WIPP, unless doing so would compromise the effectiveness of the CCA design. For example, EPA believes that it is appropriate and practicable during the operational period for DOE to establish agreements with national archives to accept and maintain records related to the WIPP. EPA therefore proposes to find DOE in compliance with the PICs requirements at §§ 194.43(a) and (b), on the condition that DOE submit additional information to EPA for approval. No later than the final re-certification application submitted prior to closure of the disposal system, DOE must provide a schedule for implementing PICs that has been revised to show that markers will be fabricated and emplaced, and other measures will be implemented, as soon as possible following closure of the disposal system. DOE also must describe how testing of any aspect of the conceptual design will be completed prior to or soon after closure, and what changes to the design may be expected to result from such testing. (See Condition 4 of the proposed Appendix A to 40 CFR Part 194.)

DOE proposed to take a credit of 99 percent over 700 years in the PA. In other words, DOE requested that the likelihood of human intrusion into the WIPP during the first 700 years after closure be reduced to one percent of the drilling rates calculated in accordance with the requirements of §§ 194.33(b)(3) and (4). The proposed credit was based largely on DOE's approach to compliance with § 194.43(b), which led DOE to conclude that all PICs are "virtually certain" to endure and be understood for at least 700 years. DOE identified drilling in the wrong location on a properly issued lease as the only plausible scenario whereby the proposed PICs could fail to deter an inadvertent intrusion. DOE then surveyed the Delaware Basin and other areas for such failures and determined that wells were drilled in the wrong location in 5 out of 429,000 instances, a rate of 0.001 percent. Finally, DOE bounded the failure rate (of 0.001) at 1.0 percent for the sake of conservatism.

EPA agrees with DOE that the proposed PICs appear likely to endure and be understood for hundreds of years. However, EPA proposes to deny DOE's request for PICs credit. The reasons for EPA's denial of PICs credit are discussed briefly below.

First, in promulgating its PICs credit criterion, EPA explicitly stated that "the degree to which PICs might reduce the future drilling rate can be reliably determined only through informed judgment." (61 FR 5232) EPA clearly expected the proposed PICs credit to be derived through an expert elicitation conducted in accordance with the requirements at 40 CFR 194.26. DOE instead prepared a justification and submitted it to peer review. EPA regards peer review as qualitatively different from expert judgment, in which the independent panel itself prepares the justification.

Second, § 194.43(c) states, "In no case . . . shall passive institutional controls be assumed to eliminate the likelihood of human intrusion entirely." DOE's rationale for the proposed credit repeatedly states that PICs are "virtually certain" to eliminate the likelihood of human intrusion. EPA believes that the

assertion that PICs are virtually certain (i.e, 99.9 percent) to endure and be understood is equivalent in effect to assuming that they eliminate the likelihood of human intrusion entirely. Furthermore, DOE's estimate of the effectiveness of PICs does not adequately account for the considerable uncertainty associated with quantifying the effectiveness of PICs for use in the PA. Specifically, there are potential failure scenarios that DOE did not account for in developing the proposed credit. For example, within the next 700 years, someone could drill based on an incorrect permit, permits may be mistakenly granted, records of the WIPP could be lost, or a system of permits to control drilling may be abandoned. While DOE's proposal does not account conservatively for uncertainty, EPA recognizes that any level of credit EPA would propose in place of DOE's estimate would be arbitrary. Finally, EPA found that the issue of quantitative credit for PICs is of little consequence for the purpose of evaluating the WIPP's performance, since the removal of PICs credit from computer models (in the Performance Assessment Verification Test) produced no signification effect on the WIPP's compliance with EPA's numerical standards.

EPA proposes to determine that DOE complies with § 194.43, on the condition that additional information on the final PICs design be submitted for EPA's review no later than the final re-certification application. For additional information on EPA's evaluation of compliance for § 194.43, see CARD 43.

D. Section 194.44, Engineered Barriers

Section 194.44 requires that DOE conduct a study of available options for engineered barriers at the WIPP and submit this study and evidence of its use with the compliance application. Consistent with the assurance requirement found at 40 CFR 191.14, which requires the use of one or more engineered barriers, DOE must analyze the performance of the complete disposal system, and any engineered barrier(s) that DOE ultimately implements at the WIPP must be considered in the PA and EPA's subsequent evaluation.

To comply with this requirement, EPA expected DOE to describe the engineered barrier(s) selected for implementation at the WIPP. EPA also expected the CCA to document how the engineered barrier(s) prevents or substantially delays the movement of water or radionuclides to the accessible environment, and how it reduces uncertainties in modeling performance of the disposal system. EPA expected DOE to conduct a comprehensive evaluation of engineered barrier alternatives in order to compare the benefits and detriments of various barriers and then use the results of such a comparison to justify selecting or rejecting a barrier(s).

In accordance with § 194.44(b), EPA observed DOE's scoping study and screening process during March and April 1995. The scoping effort produced a list of 111 potential barriers and combinations of barriers (including the barriers described in § 194.44(b)), of which 18 were evaluated against the factors described in § 194.44(c). Although DOE did not specifically address the waste categories in § 194.44(d), the study effectively accounted for the categories by analyzing three waste types (sludges, solid organics, and solid inorganics) and considering multiple waste processing schemes. DOE's evaluation of engineered barriers was peer reviewed in accordance with § 194.27(a)(3). See § 194.27, "Peer Review," for details of EPA's evaluation of the general peer review process. On the basis of its evaluation of the benefits and detriments of eighteen engineered barrier types, DOE concluded that a chemically-buffering backfill was a high-benefit, low-cost, and practicable engineered alternative. DOE selected magnesium oxide (MgO) backfill as an engineered barrier, and proposed to emplace bags of MgO between and around waste containers in the repository. DOE stated that the backfill will serve to: (1) substantially delay movement of radionuclides by controlling chemical conditions in the underground waste panels so that the solubility of radionuclides in water is reduced, (2) delay movement of water by reacting with brine to reduce free water in the disposal system, and (3) fix pH levels within a narrow range, thereby bounding an important modeling parameter whose value might otherwise be highly uncertain.

EPA found that DOE conducted the requisite analysis of engineered barriers and selected an engineered barrier designed to prevent or substantially delay the movement of water or radionuclides toward the accessible environment. DOE provided substantial documentation in the CCA and supplementary information that MgO can effectively reduce actinide solubility in the disposal system. EPA agrees that the chemical reactions that DOE associated with MgO can occur under predicted repository conditions. DOE proposed to emplace a large amount of MgO in and around waste drums in order to provide an additional factor of safety and thus account for uncertainties in the geochemical conditions that would affect CO_2 generation and MgO reactions. (For details regarding chemical reactions of MgO, see CARD 24, "Waste Characterization." For further information regarding the PA modeling of solubility and chemical conditions in the repository, see CARD 23, "Models and Computer Codes.")

Public comments received on EPA's Advance Notice of Proposed Rulemaking ("ANPR") questioned two aspects of DOE's treatment of engineered barriers in the CCA. First, commenters disagreed that borehole plugs, shaft seals, and panel seals should be treated by DOE as engineered barriers for the purpose of complying with § 194.44. EPA found that DOE had treated plugs and seals as part of the baseline design of the disposal system, not as additional barriers for the purpose of assurance. The effectiveness of plugs and seals is discussed as part of EPA's evaluation of the disposal system design under § 194.14, "Content of Compliance Certification Applications." Second, commenters expressed concern that the CCA did not support conclusions about the effectiveness of MgO with experimental data or other documentation. EPA shared this concern and so requested that DOE provide additional documentation showing that backfill could be emplaced in the required manner and would function in the disposal system as proposed. EPA believes that supplementary information sent by DOE adequately addressed insufficiencies in the CCA.

EPA proposes to find DOE in compliance with § 194.44. For further information on EPA's evaluation of compliance for § 194.44, see CARD 44.

E. Section 194.45, Consideration of the Presence of Resources

Section 194.45 implements the assurance requirement that the disposal system be sited such that the benefits of the natural barriers of the disposal system compensate for the increased probability of disruptions to the disposal system resulting from exploration and development of existing resources. (61 FR 5232) In promulgating this requirement, EPA determined that the performance assessment ("PA") is the appropriate tool to weigh the advantages and disadvantages of the WIPP site because PA demonstrates whether potential human intrusion will cause unacceptably high releases of radioactive material from the disposal facility.

In accordance with the Compliance Criteria, DOE must demonstrate that PA has incorporated the potential effects of human activities near the WIPP prior to disposal, and of drilling and excavation mining over the regulatory time frame. DOE also must document that the results of the PA demonstrate compliance with the containment requirements at 40 CFR 191.13. No further demonstration of compliance is needed for § 194.45.

The Agency confirmed that PA incorporated human intrusion scenarios and met EPA's release limits in accordance with the WIPP Compliance Criteria. Based on EPA's findings that DOE complied with requirements related to scope of PA, conduct of PA, mining and drilling activities over the regulatory time frame, results of PA, and pertinent assurance requirements, EPA proposes to determine that DOE has demonstrated compliance with § 194.45. For further explanation of EPA's proposed compliance decisions for these related compliance criteria, see preceding preamble discussions for § 194.14, § 194.23, § 194.32, § 194.33, § 194.34, § 194.41, and § 194.43. For further information on EPA's evaluation of compliance for § 194.45, refer to CARD 45.

F. Section 194.46, Removal of Waste

Section 194.46 requires documentation that the removal of waste from the disposal system is feasible for a reasonable period of time after disposal. (61 FR 5244) The intent of this provision is to implement the assurance requirement at 40 CFR 191.14(f) that "disposal systems be selected so that removal of most of the waste is not precluded for a reasonable period of time after disposal." To meet the criteria of § 194.46, EPA expected the CCA to provide a comprehensive strategy that showed the manner in which waste could be removed from the repository for a reasonable period of time after closure and an estimate of how long after disposal removal of waste would remain technologically feasible. Although the eventual disposition of the waste is an important environmental concern, 40 CFR Part 194 does not require DOE to speculate on the possible location or hazards of the waste once it is removed from the repository.

In the CCA, DOE presented a five-phase approach to removing waste from the WIPP repository, including: planning and permitting; initial above-ground set-up and shaft sinking; underground excavation and facility set-up; waste location and removal operations; and decontamination and decommission of the facility. The CCA included a discussion of techniques that could be used to remove the waste given the repository conditions at the time of removal, and also discussed several existing mining techniques that could be used to remove waste from the WIPP repository.

EPA reviewed the CCA to assess the completeness of the strategy for removing the waste and the justification of the proposed technology for removing the waste. EPA believes that the five phases described for waste removal provide an orderly sequence of planning and implementation procedures that could be implemented. EPA agrees that the proposed activities, techniques, and equipment that would be necessary to remove the waste are all presently feasible.

EPA reviewed the CCA for an estimate of how long after disposal it would remain technologically feasible to remove the waste. DOE stated that, using the system and equipment proposed in the CCA, it would be feasible to remove the waste any time after emplacement. Thus, DOE appeared to conclude that no features of the disposal system (such as salt creep) will prevent the removal of waste from the repository as long as the technology described in the CCA remains available. The CCA did not address how long the technology might remain available.

EPA agrees that waste removal would be feasible as long as current technology remains available, but does not believe it is reasonable to assume that the technology will remain available over the entire regulatory time frame. To estimate the length of time for which waste removal would be feasible, EPA considered how long the technology described in the CCA might remain available. The Agency concluded that, as long as our present society remains stable, it is reasonable to conclude that there will likely be a continuity or advancement of technology which would allow waste removal to occur. In the disposal regulations, EPA identified 100 years after disposal as a realistic but conservative limit on how long active controls could be assumed to be effective—i.e., how long present institutions would remain in place continuously to enforce such controls. (50 FR 38080) Based on this same rationale, EPA believes it is reasonable to assume that current technology will remain available for the 100-year period after disposal, and therefore that waste removal will remain feasible for that time. EPA believes that 100 years constitutes a reasonable period of time after disposal, in accordance with § 194.46. Therefore, EPA concludes that DOE has met the regulatory requirements for the removal of waste, and proposes to find DOE in compliance with § 194.46. For further information on EPA's evaluation of compliance for § 194.46, see CARD 46.

XIII. Individual and Ground-water Protection Requirements

Sections 194.51 through 194.55 of the Compliance Criteria implement the individual protection requirements of 40 CFR 191.15 and the ground-water protection requirements of Subpart C of 40 CFR Part 191. Assessment of the likelihood that the WIPP will meet the individual radiation dose limits and radionuclide concentration limits for ground water is conducted through use of a process known as compliance assessment ("CA"). Compliance assessments use methods similar to those of PA (for the containment requirements) but are required to address only undisturbed performance of the disposal system. Sections 194.51 and 194.52 specify the requirements which must be incorporated into CA in the analyses of individual radiation doses to protected individuals. Section 194.53 addresses underground sources of drinking water. Finally, the criteria specify the scope of CA and establish statistical requirements on the results of CA in demonstrating compliance with the individual and ground-water protection requirements (§§ 194.54 and 194.55).

A. Section 194.51, Consideration of Protected Individual

Section 194.51 requires DOE to assume in compliance assessments ("CA") that an individual resides at the point on the surface where the dose from radionuclide releases from the WIPP would be greatest. EPA required that the CCA identify the maximum annual committed effective dose and the location where it occurs, and explain how DOE arrived at those results.

DOE's analysis of the WIPP's compliance with § 194.51 and related sections of the Compliance Criteria was contained in the CCA and in supplementary information. DOE described its analysis as a "bounding analysis" because it assumed that the maximum concentration of radionuclides was available in underground sources of drinking water ("USDWs") and that humans using that water would therefore receive the maximum dose possible from that pathway.

The bounding analysis was derived from the performance assessment for the undisturbed scenario. DOE analyzed all potential routes of release of radioactive

waste from the repository that could lead to exposure of an individual and determined that the only release to the accessible environment would be passage of contaminated water through the interbeds in the Salado Formation, where the WIPP is situated. In the analysis, DOE demonstrated that radionuclides migrated horizontally to the accessible environment in only nine out of 300 realizations.

DOE then assumed that the highest concentration of radionuclides from the nine realizations was present at the subsurface boundary of the accessible environment, and that individuals would take water for consumption or agricultural use directly from this location in the Salado. DOE stated that it was not necessary to identify a single point of maximum dose because the analysis assumed that the maximum radionuclide concentration was available to individuals in brine taken from the Salado Formation; therefore, the dose from various pathways would be maximized regardless of an individual's location on the surface of the accessible environment. For more discussion of DOE's consideration of pathways in the bounding analysis, see § 194.52, "Consideration of Exposure Pathways."

EPA agrees that it was conservative for DOE to base its calculations of individual dose on the maximum predicted radionuclide concentrations. EPA also accepts as technically sound DOE's rationale for not identifying a single geographic point at which individual committed effective dose is greatest, since under DOE's assumptions, all points on the surface would result in the same maximum dose. Therefore, EPA proposes to find DOE in compliance with § 194.51. EPA discusses whether the results of DOE's dose calculations comply with the individual protection requirements at 40 CFR 191.15 under the evaluation for § 194.55, "Results of CA." Due to the relatedness of the requirements, EPA combined the discussion of DOE's compliance for §§ 194.51 and 194.52 ("Consideration of Exposure Pathways") in a single Compliance Application Review Document (CARD 51/52).

B. Section 194.52, Consideration of Exposure Pathways

The individual protection requirements focus on the annual radiation dose of a hypothetical maximally-exposed person living on the surface just outside the boundary to the accessible environment. Section 194.52 requires DOE's compliance assessments for the individual protection requirements to consider all potential exposure pathways for radioactive contaminants from the WIPP. DOE must assume that an individual consumes 2 liters per day of drinking water from any underground source of drinking water in the accessible environment. EPA expected that DOE would postulate several release pathways and calculate the dose resulting from each pathway. In the CAG, EPA stated that DOE could employ simplified exposure models provided that DOE showed them to be more conservative than more detailed models. (CAG, pp. 67–68)

DOE's modeling identified only one possible release of radionuclides to the accessible environment for the undisturbed performance scenario, resulting from contaminated brine flowing through the Salado Formation interbeds. DOE's modeling indicated that this release could occur if there were a significant buildup of gas and fluid pressure within the WIPP's waste panels.

To assess this potential exposure pathway, DOE conservatively assumed that Salado brine would be available for human use once it reached the subsurface boundary of the accessible environment. Water in the Salado interbeds is actually a highly concentrated brine unsuitable for drinking; DOE has measured the average concentration of total dissolved (non-radioactive) solids ("TDS") in Salado brine as 324,000 milligrams per liter (mg/L). DOE therefore assumed that brine would have to be diluted with pure water in order to bring the concentration of TDS down to the highest allowable amount under the standard for potable water (10,000 mg/L TDS). DOE assumed that this diluted Salado brine would be consumed at the rate of two liters per day and then calculated the dose resulting from this single pathway of water ingestion.

EPA required DOE to expand its analysis to include additional pathways. This expanded analysis is described in supplementary information sent by DOE. (Docket A–93–02, Item II-I–10) DOE examined pathways whereby humans either inhale dust from soil irrigated with contaminated water or consume agricultural products irrigated with contaminated water. In the latter case, pathways included plants eaten directly by humans and milk or beef from cattle whose stock pond contained contaminated water.

Based on the CCA and the supplementary information described above, EPA found that DOE assumed in its analysis of pathways that individuals consume 2 liters per day of water from underground sources. EPA also conducted independent calculations and concluded that DOE had reliably reported the doses expected to result from all pathways considered. EPA discusses whether the results of DOE's dose calculations comply with the specific requirements of 40 CFR 191.15 under 194.55, "Results of Compliance Assessments."

EPA found that the simplified "bounding analysis" employed by DOE (described under § 194.51 above) was sufficiently conservative not to require the use of more detailed models. The bounding analysis was conservative because it assumed unrealistically that brine in the Salado Formation would be used as a source of water for drinking and irrigation. In fact, brine in the Salado is not likely to be used as an underground source of drinking water because it has an extremely high concentration of TDS. Salado brine would require considerable dilution in order to meet the criteria for potable water, and dilution would serve to reduce radionuclide concentrations. There are other, more likely sources of water than the Salado in the vicinity of the WIPP (see § 194.53 below), but DOE's modeling demonstrated that radionuclides from the WIPP would not reach these sources in the undisturbed scenario.

EPA therefore proposes to find the WIPP in compliance with § 194.52. Due to the relatedness of the requirements, EPA combined the discussion of DOE's compliance with §§ 194.51 ("Consideration of the Protected Individual") and 194.52 in a single Compliance Application Review Document (CARD 51/52).

C. Section 194.53, Consideration of Underground Sources of Drinking Water

Section 194.53 requires that compliance assessments of the undisturbed performance scenario consider underground sources of drinking water ("USDWs") near the WIPP and their interconnections. The undisturbed scenario assumes that the disposal system will not be disturbed by human activities such as drilling or mining. A USDW is defined at 40 CFR 191.22 as "an aquifer or its portion that supplies a public water system, or contains a sufficient quantity of ground water to do so and (i) supplies drinking water for human consumption or (ii) contains fewer than 10,000 mg per liter of total dissolved solids."

DOE identified three potential USDWs near the WIPP—the Culebra Member of the Rustler Formation, the Dewey Lake Red Beds, and the Santa Rosa Sandstone of the Dockum Group—despite incomplete data showing that

they in fact meet the regulatory definition of a USDW. However, DOE did not identify a plausible release scenario in undisturbed conditions in which radionuclides from the WIPP reached these potential USDWs. DOE found instead that the only plausible release scenario in undisturbed conditions involved transport of radionuclides by brine laterally through the Salado Formation (where the WIPP is situated) to the subsurface boundary of the accessible environment. The concentration of radionuclides at the subsurface boundary in this scenario represents the maximum level possible in the accessible environment.

DOE assumed that brine at the subsurface boundary would be directly available to a hypothetical individual on the surface for use as drinking water. In other words, DOE assumed that people would draw water directly from the Salado, thereby bypassing other potential USDWs, and would thus be exposed to the maximum concentration of radionuclides. Because DOE assumed the worst-case scenario and did not attempt to demonstrate in the analysis that transport of radionuclides through geological formations in the accessible environment would lower their concentrations, DOE concluded that it was not necessary to analyze underground interconnections among water bodies.

EPA agrees that the Culebra, Santa Rosa, and Dewey Lake Formations are the most likely potential USDWs. Also, EPA agrees that it was not necessary to identify USDW interconnections because of DOE's conservative assumption that individuals, regardless of their location on the surface of the accessible environment, would be exposed to the maximum available concentration of radionuclides in drinking water.

Based on information provided in the CCA, EPA concluded that DOE adequately considered USDWs in compliance assessments. EPA therefore proposes to find that DOE complies with § 194.53. EPA discusses whether the results of DOE's calculations comply with the requirements of § 191.15 and Subpart C of 40 CFR Part 191 in § 194.55, "Results of CA." For further discussion of EPA's evaluation of compliance for § 194.53, see CARD 53.

D. Section 194.54, Scope of Compliance Assessments (CA)

Section 194.54 addresses the scope of compliance assessments ("CA") conducted to determine compliance with the individual dose and ground-water protection requirements of the disposal regulations. The CA must account for the undisturbed performance of the disposal system; that is, the predicted behavior of the disposal system if it is not disrupted by human intrusion or the occurrence of unlikely natural events (§ 191.12). As with performance assessment, the CA must consider features, events, and processes ("FEPs") and associated uncertainties. The CA can be considered a "subset" of performance assessment, as CA considers only natural/undisturbed conditions and past/near-future human induced activities, but does not include long-term future human-induced activities that are included in performance assessment.

EPA required DOE to consider FEPs that relate to undisturbed performance of the disposal system. EPA required DOE to identify how these FEPs were screened, combined, and used in the CA. DOE was required to document why any undisturbed scenario FEPs were not included in the CA. EPA also required the CA to consider activities that occur in the vicinity of the WIPP and their effect on radionuclide migration from the site. Specifically, DOE was required to consider existing boreholes and near future lease development.

To fulfill the requirements of § 194.54(a), DOE developed and followed a process for considering FEPs in the CA. Out of the initial list of approximately 72 natural FEPs, DOE eventually included 17 in the CA. This is the same process that was used in identifying FEPs for PA; EPA's evaluation of the process is addressed in the preamble discussion of § 194.32. EPA concluded that the initial FEP list assembled by DOE was sufficiently comprehensive, in accordance with the requirements of § 194.54(a). This list appropriately screened out events and processes on the basis of probability, consequence or regulatory requirements. DOE considered and incorporated into CA numerous natural processes and events. DOE adequately documented the decision not to include FEPs in the CA. (See preamble discussion for § 194.32.)

DOE, in accordance with the requirements of § 194.54(b), conducted an analysis of the activities that are expected to occur in the vicinity of the WIPP in the near future. DOE's assessment of existing boreholes indicated that natural fluid flow through abandoned boreholes would be of very little consequence in the near future and was therefore not included in the CA. In addition to existing boreholes, DOE addressed a number of activities that could occur in the vicinity of the WIPP in the near future. These activities were: oil and gas exploration, exploitation and extraction; potash exploration and exploitation; fluid injection related to oil and gas production; sulfur coreholes; hydrocarbon/gas storage; brine wells for solution mining; and water supply wells. DOE determined that none of these activities will have an impact on the disposal system in the near future and therefore did not include them in the CA. DOE examined fluid injection for inclusion in the CA, but screened it out based on low consequences to the disposal system if it happened. DOE also provided information on leases in the WIPP area.

EPA reviewed the CCA analysis of existing boreholes in the vicinity of the WIPP and their potential impact on radionuclide migration and agrees with DOE's conclusion that existing boreholes will not affect the disposal system. EPA and public commenters disagreed with DOE's initial analysis of the effects of fluid injection and salt water mining. Upon reviewing supplemental modeling of these scenarios, conducted by DOE and also independently by EPA, EPA agrees that these activities were correctly omitted from the CA. (See the preamble for § 194.32 for further discussion of this additional modeling.) DOE satisfactorily identified leases near the WIPP and appropriately estimated the life of the leases for consideration in the CA.

EPA proposes to find DOE in compliance with the requirements of § 194.54. For further information on EPA's evaluation of compliance for § 194.54, see CARD 54.

E. Section 194.55, Results of CA

Section 194.55 establishes requirements for analyzing the WIPP's compliance with the individual and the ground-water protection requirements of the disposal regulations. These requirements: (1) limit the possible radiation dose from the WIPP to individuals in the accessible environment, and (2) limit the degree of radioactive contamination of groundwater for which the WIPP might be responsible. Both limitations are required to be analyzed for undisturbed performance of the disposal system for 10,000 years. (See the discussion for § 194.54 in today's preamble.)

40 CFR 191.15, the individual protection requirements, requires that there must be a reasonable expectation that undisturbed performance of the WIPP disposal system will not cause the annual committed effective dose equivalent to exceed 15 millirems (150 microsieverts) to any member of the public in the accessible environment. Subpart C of 40 CFR Part 191, the ground-water protection requirements, sets requirements on the radiation levels

in underground sources of drinking water ("USDWs") by referencing the standards of the Safe Drinking Water Act at 40 CFR Part 141. In order to determine compliance with these requirements, DOE must calculate the maximum individual radiation dose from all pathways, the maximum concentrations of specific radionuclides in any USDW, and the maximum annual dose equivalents from radioactivity in any USDW.

Section 194.55 establishes six requirements for computing, presenting, and evaluating the results of compliance assessments ("CA"). The requirements of §§ 194.55(b) through (f) are analogous to the requirements of §§ 194.34(b) through (f) for the results of performance assessment ("PA"). As a result, DOE has been able to use the same computational techniques and the same computer codes to perform both PA and CA. The major differences between the analyses for PA and CA are that: (1) CA considers only undisturbed performance of the WIPP, and thus does not consider scenarios of human intrusion; (2) CA requires calculations of doses and radioactivity concentrations in USDWs, as well as cumulative releases; and (3) CA results are expressed as a set of dose and concentration values, while PA results are expressed as a series of complementary cumulative distribution function ("CCDF") curves.

1. Uncertainty of CA

Section 194.55(a) requires the CA to consider and to document uncertainty in the performance of the disposal system. There are two general sources of such uncertainty. The first is the uncertainty associated with physical, chemical and geologic conditions within and around the repository. The CA deals with this by running 300 different undisturbed-site scenarios, with 300 independent sets of sampled values for the most important uncertain parameters (i.e., parameters either that vary from place to place or that simply are not known with precision, but which have been determined to have a significant effect on the WIPP's ability to contain radionuclides). The second source of uncertainty is the lack of detailed knowledge of the ways in which contaminated ground water might be pumped out and utilized by persons living near the site in the future. DOE handles this uncertainty through a conservative bounding calculation on individual doses, which is intended to demonstrate compliance regardless of any uncertainties. The bounding calculation is discussed in further detail in the discussions of §§ 194.51 and 194.52 in this preamble.

DOE evaluated uncertainty in the amount of contaminants transported underground using the same method as in the PA, except that uncertainty from human intrusion scenarios was not considered. For further information on the treatment of uncertainty in PA, see the discussion of § 194.34 in today's preamble. EPA found that the conservative bounding calculation is appropriate, in lieu of further uncertainty analysis, and that DOE's treatment of uncertainty in CA is sufficient. Therefore, the Agency proposes to find that WIPP complies with § 194.55(a).

2. Probability Distributions for Uncertain Parameters

Section 194.55(b) requires DOE to develop and document probability distributions for uncertain disposal system parameter values used in CA. This is similar to the requirement for parameter values used in the PA. DOE uses the same probability distributions for uncertain disposal system parameter values in both PA and CA calculations. This involves performing calculations with 300 independent sets of sampled parameter values for each of the 57 important parameters associated with uncertain physical, chemical and geological conditions in the repository and its surroundings. EPA conducted the same evaluation of probability distributions for CA as for PA.

Upon reviewing DOE's models and computer codes, the Agency questioned a number of important input parameter values and distributions used in the PA and in CA. EPA determined that corrections were necessary for certain input parameters and conceptual models. Because of concerns that the necessary corrections to these parameters and conceptual models could have significant effects on the actual results of modeling, EPA required DOE to demonstrate that the combined effect of all the parameter and computer code changes required by EPA was not significant enough to necessitate a new PA. EPA required DOE to perform 300 simulations in additional PA and CA calculations as a Performance Assessment Verification Test ("PAVT"). The PAVT implemented DOE's PA modeling, using the same sampling methods as the CCA PA, but incorporating parameter values that were selected by EPA. CA results of the PAVT are discussed below for requirement § 194.55(f) and PA results of the PAVT are discussed above in § 194.34 of this preamble. The PAVT results confirmed that the original PA is sufficiently conservative and indicated that further PA and CA analysis is not required.

After considerable analyses, including the PAVT, EPA was satisfied that the parameter values and distributions were adequate for determining compliance. See the discussion of the requirements of § 194.34 of this preamble. For the reasons discussed in that section, EPA also proposes to find the CCA in compliance with § 194.55(b).

3. Sampling of Uncertain Parameters

Section 194.55(c) requires CA to use computational techniques which draw random samples from across the entire range of probability distributions of uncertain parameters. These computational techniques then must be used to calculate the ranges of estimated radiation doses to individuals received from all pathways; radionuclide concentrations in USDWs; and radiation doses received from USDWs. This requirement is parallel to § 194.34(c), which requires techniques for random sampling from parameter distributions in the computation of CCDF curves for the results of PA.

The statistical technique that DOE used in selecting parameter values in PA, Latin Hypercube Sampling ("LHS"), is also employed in the calculations of radionuclide concentrations in ground water (which are then used to calculate individual doses) for the CA. The CA generated 300 values of contaminant concentrations in ground water (at the boundary to the accessible environment) and individual annual radiation doses to assess compliance with § 194.55.

EPA found the LHS technique for drawing samples randomly from probability distributions of uncertain parameters to be sufficient, as discussed in this preamble for § 194.34. In addition, EPA determined that DOE's conceptual model for determining maximum individual exposure and the GENII-A computer code used to calculate radiation doses were adequate. The Agency found that DOE has used an appropriate computational technique, LHS, for sampling widely from the parameter distributions described in § 194.55(b), and has used it to generate ranges of radionuclide concentrations in USDWs, doses from the ingestion of water from USDWs, and all-pathways doses. Therefore, EPA proposes to find that DOE has demonstrated compliance with § 194.55(c).

4. Sufficient Number of Estimates Generated

Section 194.55(d) requires that the number of estimates of radionuclide concentrations in USDWs, doses from

the ingestion of water from USDWs, and all-pathways doses must be large enough such that the maximum estimates of doses and concentrations generated exceed the 99th percentile of the population of estimates with at least 0.95 probability. This requirement is similar to the requirement of § 194.34(d) for determining if there is a sufficient number of CCDF curves in PA analysis. Both requirements have the purpose of ensuring that enough simulations are generated so that conclusions drawn from their analyses are statistically justified.

DOE produced 300 CA calculations and used the same statistical arguments to justify both the number of calculations for CA and the number of CCDF curves. See the discussion for § 194.34 in this preamble for a further explanation of DOE's justification and EPA's review. EPA found that, for random sampling, 300 individual estimates will provide 0.95 probability that at least one of them will exceed the population 99th percentile value. Thus, EPA proposes to determine that the CCA satisfies the requirement of § 194.55(d).

5. Display full range of CA results

Section 194.55(e) requires the CCA to display the full range of estimated radiation doses and radionuclide concentrations. Section 194.34(e) has a parallel requirement for displaying the full range of CCDFs generated.

DOE's CA analysis of individual doses started with the findings of the PA of contamination that has migrated to the accessible environment in the anhydrite interbeds immediately surrounding the repository in the case of an undisturbed repository. This analysis generated a full range of radionuclide concentrations in the ground water. DOE found that only nine of the three hundred estimates were not negligibly small (that is, less than 10^{-18} curies/liter)[24]. Starting with the concentrations in the interbeds, DOE conducted bounding calculations on individual dose, both from the ingestion of drinking water and from all exposure pathways combined. These calculations adopted assumptions that resulted in upper-bound estimates of dose that are much greater than what any individual might reasonably be expected to receive. DOE performed this bounding calculation in lieu of providing descriptive statistics for the estimates such as mean, median and standard deviation, as stated in EPA's "Compliance Application Guidance for the WIPP" ("CAG"). The criteria and the CAG allow the use of a bounding calculation as long as the simplified model is more conservative than more detailed and more complex modes. (CAG, p. 68)

EPA reviewed the CCA and found that DOE performed a full range of the necessary calculations to demonstrate compliance with § 191.15 and Subpart C of 40 CFR Part 191. EPA independently estimated and tabulated the all-pathway and USDW doses in a dose verification analysis. EPA's results generally agreed with those of the DOE analysis, although EPA found DOE's calculations to be conservative. EPA calculated descriptive statistics such as the mean and the 95 percent confidence interval for doses and concentrations to provide added assurance of the adequacy of DOE's methodology. Because the CCA presents specific estimates for each of the non-zero simulations or the upper bound estimate for those simulations and presents the full ranges of radionuclide concentrations and radiation doses, EPA proposes to find that DOE has demonstrated compliance with § 194.55(e).

6. Compliance With Radiation Dose and Radionuclide Concentration Limits

Section 194.55(f) requires the CCA to document that there is at least a 95 percent level of statistical confidence that the mean and the median of the range of estimated radiation doses and the range of estimated radionuclide concentrations meet the requirements of § 191.15 and Subpart C of 40 CFR Part 191. This requirement is analogous to § 194.34(f), which requires at least a 95 percent level of statistical confidence that the mean of the population of CCDFs meets the containment requirements of § 191.13. In order to meet this requirement, it is necessary to calculate the lower and upper limits of the range, the mean, and the median of the estimated doses and of the radionuclide concentrations.

The limit for individual doses in § 191.15 is an annual committed effective dose, from all pathways, of 15 mrem/year. The limits for doses and radionuclide concentrations in USDWs under Subpart C of 40 CFR Part 191 are a total radioactivity concentration for radium-226 and radium-228 in any USDW of 5 picocuries per liter of water (pCi/L); a gross alpha particle radioactivity (including radium-226 but excluding radon and uranium) in any USDW of 15 pCi/L; and an annual dose equivalent to the total body or any internal organ from beta particle and photon radioactivity in any USDW of 4 mrem/year. DOE calculated a maximum annual committed effective dose equivalent from exposure through all pathways of 0.93 mrem/year. The CCA reported that the maximum estimated radium concentration in ground water is 2.0 pCi/L. The CCA contained the 300 estimated concentrations for the five radionuclides ^{241}Am, ^{239}Pu, ^{238}Pu, ^{234}U, and ^{230}Th, and only nine of these were not negligibly small. The CCA reported the maximum gross alpha particle concentration as 7.81 pCi/L from ^{241}Am, ^{239}Pu, ^{238}Pu, ^{230}Th and all isotopes of Ra. DOE used its bounding calculation for dose due to all radionuclides from drinking USDWs to show that the annual dose equivalent to the whole body from beta particle and photon radioactivity would be no more than 0.47 mrem/year. Supplemental analyses conducted by DOE also showed that the maximum beta particle and photon dose equivalent to any internal organ was well below the 4 mrem/year regulatory limit; bone surface was identified as the critical organ for that calculation. The maximum estimate concentration or dose for each of these is less than the standard. Because the maximum value for each of these values was less than the applicable standard, and because the bounding analysis accounted for sources of uncertainty, DOE concluded that the mean, median and 95 percent confidence interval values also met the standards of § 191.15 and Subpart C of 40 CFR Part 191.

EPA commissioned an independent analysis to verify DOE's dose calculations. In general, EPA's analysis calculated values similar to those calculated by DOE. EPA also calculated the mean, median and 95 percent confidence intervals of concentrations and doses. EPA's analysis confirmed that the mean and median values are in compliance with the requirements of § 191.15 and Subpart C of Part 191.

The PAVT computed thirteen simulations with non-negligible concentrations of radionuclides in ground water, compared with nine in the CCA CA. All of these thirteen simulations computed doses of less than 1 mrem/year, compared to the standard of 15 mrem/year for individuals. PAVT calculations also demonstrated that the doses to internal organs and from beta particle and photon radiation in ground water were several orders of magnitude less than the standard. Thus, PAVT results indicated that the mean and median dose values and ground-water concentrations will meet the requirements of § 191.15 and Subpart C of Part 191.

[24] The Agency agrees with DOE that concentrations of less than 10^{-18} curies per liter are negligibly small. Such small concentrations found in the analysis could be due to calculational error rather than true indicators of radioactive contamination of USDWs.

Based on the CCA, supplementary documentation provided by DOE, and the Agency's independent studies, EPA has determined that there is at least a 95 percent level of statistical confidence that the mean and the median of the range of estimated radiation doses and the range of estimated radionuclide concentrations meet the requirements of § 191.15 and Subpart C of 40 CFR Part 191. Therefore, EPA proposes to find that DOE has demonstrated compliance with § 194.55(f). For further information on EPA's evaluation of compliance for § 194.55, see CARD 55.

XIV. Land Withdrawal Act Section 4(b)(5)(B) Leases

The 1992 WIPP Land Withdrawal Act ("LWA") (Public Law 102–579) withdrew the geographical area containing the WIPP facility from all forms of entry, appropriation, and disposal under public land laws. The LWA transferred jurisdiction of the land to the Secretary of Energy explicitly for the use of constructing, operating, and conducting other authorized activities related to the WIPP. Further, the LWA established responsibilities for DOE to manage the land withdrawal area and required submittal of a management plan for that purpose. Under DOE's management plan, all surface or subsurface mining or oil or gas production is prohibited at all times on lands on or under the withdrawal area. (LWA, section 4(b)(5)(A)) However, the LWA exempted, from the prohibition on oil and gas production, two leases already in existence. Section 4(b)(5)(B) states that the existing rights under the two oil and gas leases (Nos. NMNM 02953 and 02953C) (hereafter, "the section 4(b)(5)(B) leases") shall not be affected unless the Administrator determines, after consultation with DOE and the Department of Interior, that the acquisition of such leases by DOE is required to comply with EPA's final disposal regulations at 40 CFR Part 191, Subparts B and C. Before DOE can emplace waste in the WIPP, DOE must either acquire the leases or the EPA must determine that such acquisition is not required. (LWA, section 7(b)(2))

In 1977, DOE purchased the leases in the land withdrawal area between the surface and 6,000 feet (1829 meters) below the surface. Since DOE owns all land rights down to 6,000 feet, no drilling is permitted from the surface of the LWA leases. Any drilling that takes place on the LWA section 4(b)(5)(B) leases must therefore be slant drilling that is initiated from outside the land withdrawal area. Oil and gas resources in the southwest area of the site, where the section 4(b)(5)(B) leases are located, are expected to occur below 6000 feet down to approximately 16,000 feet.

The EPA's determination of whether the section 4(b)(5)(B) leases must be acquired by DOE depends on an evaluation of drilling activities very similar to that conducted by DOE for performance assessment ("PA") related to the containment requirements at 40 CFR 191.13. In fact, § 194.32(c) of the WIPP Compliance Criteria requires DOE to analyze the effects of any activities that occur in the vicinity of the disposal system prior to or soon after disposal, including the "development of any existing leases." Therefore, in its examination of the effects of the section 4(b)(5)(B) leases, EPA relied on the closely related PA analyses conducted by DOE for the purpose of compliance with § 194.32(c).

For an oil or gas well, the potential life cycle may consist of: drilling; resource recovery (production); fluid injection for enhanced secondary production (either by waterflooding techniques or injection to maintain oil reservoir pressure); reinjection of waste fluids for disposal; and abandonment. In the PA for the compliance certification application ("CCA"), DOE conducted several analyses to identify the potential effects of these activities on the disposal system, with the exception of production, which is exempted from consideration by regulation (§ 194.33(d)). EPA examined each of DOE's analyses in its evaluation for the section 4(b)(5)(B) leases.

In its analyses for the PA, DOE concluded that the drilling of a deep well would adversely affect the disposal system only if the borehole intersected a waste panel in the underground portion of the WIPP. Drilling is of concern if the borehole penetrates the waste, and forces it to the surface, or allows a pathway for long-term transport of radionuclides. EPA agrees that the effects of drilling a borehole—and similarly, the effects of resource recovery (oil or gas production)—would be highly localized, for several reasons. Current oil and gas production drilling in the area near the WIPP site includes well casing procedures and borehole plugging practices that would mitigate the potential impact of future drilling activities. Wells drilled in the Delaware Basin (which encompasses the entire land withdrawal area) include at least two sets of steel casing lining the borehole (deeper wells use three sets of steel casing). Also, production and injection wells contain an additional set of tubing used to produce the oil or gas, or to inject fluid into the well. Present day practice would require multiple failures in these steel casings and tubings to cause any flow from the oil- or gas-producing zone towards the disposal system.

Borehole plugging practices near the WIPP site also employ multiple levels of protection that mitigate the potential impact of oil and gas operations in the immediate area. The State of New Mexico regulates borehole plugging practices with a robust series of requirements that control the flow of fluid in the subsurface (New Mexico Oil Conservation Division, Order R–III–P). The use of these measures reduce the chance of any fluid flow toward or into the repository using current methods and technology.

Fluid injection for brine disposal, waterflood, or pressure maintenance could affect the disposal system if the injected brine were to reach the waste area by way of migration through Salado anhydrites (calcium sulfate rock) (markerbeds 138 or 139). DOE analyzed this scenario in two different modeling studies (Docket A–93–02, Item II–G–1, Reference #611, and Item II–I–36) as well as in a study that identified well construction and operating practices in the vicinity of WIPP. The results of the modeling studies showed that little or no brine would be expected to reach the WIPP waste area through the anhydrite interbeds. The amount of brine that is modeled to reach the repository in the initial study (Docket A–93–02, Item II–G–1, Reference #611) is within the amount that is already accounted for in PA, and does not cause the WIPP to violate the disposal regulations.

An examination of current practice for fluid injection techniques confirms that the effects of fluid injection can also be expected to be highly localized. All injection operations in the vicinity of the WIPP site are controlled by the underground injection control requirements of the EPA. (40 CFR Parts 144 and 146) The requirements limit the flow rates of injection fluids and the maximum pressures that can be used in all injection wells. In addition, the injection well operator is required to evaluate the area of influence of any injection well before injection operations can be approved, and the State of New Mexico monitors the performance of injection operations periodically by requiring stringent reporting procedures.

Regarding abandonment, DOE indicated (Appendix SCR.3.3.1.4.2 of the CCA) that abandoned deep boreholes that do not intersect waste panels have been eliminated from the PA calculations on the basis of low consequence to the performance of the disposal system. This is because the rate of fluid flow through a borehole located

more than a meter away from the waste panels is so small that it would have an insignificant impact on releases.

EPA's review of DOE's modeling studies and analyses of well construction and operating practices found that the parameterization (e.g., injection rate and volumes) and model representation (e.g., incorporation of stratigraphy) used in DOE's modeling are consistent with those characteristics identified independently by EPA for the region in the southwest part of the land withdrawal area (the location of the section 4(b)(5)(B) leases). (Docket A–93–02, Item III–B–27) DOE's analysis of drilling for the PA indicated that deep wells drilled into the controlled area, but away from the waste disposal rooms and panels, will not adversely affect the disposal system's capability to contain radionuclides. A slant-drilled borehole from outside the land withdrawal area, into the section 4(b)(5)(B) lease area, at least 6000 feet below the surface, would be at least 2400 meters (8000 feet) away from the WIPP disposal rooms, and would thus have an insignificant effect on releases from the disposal system (and in turn, on compliance with the disposal regulations). Based on EPA's findings that DOE adequately modeled human intrusion scenarios in PA, and on the additional analyses described above, EPA concludes that potential activities at the section 4(b)(5)(B) leases do not cause the WIPP to violate the disposal regulations. Therefore, EPA determines that it is not necessary for the Secretary of Energy to acquire the Federal Oil and Gas Leases No. NMNM 02953 and No. NMNM 02953C.

XV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51,735; October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel policy issues which arise from legal mandates. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because it sets forth requirements which apply only to Federal agencies. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The EPA has determined that this proposed rule contains no information collection requirements as defined by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*).

D. Unfunded Mandates Reform Act

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. Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), EPA has determined that this regulatory action is not subject to the requirements of sections 202 and 205, because this action does not contain any "federal mandates" for State, local, or tribal governments or for the private sector. The rule implements requirements specifically set forth by the Congress in the Waste Isolation Pilot Plant Land Withdrawal Act (Pub. L. 102–579).

E. Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. EPA has complied with this mandate. EPA involved minority and low-income populations early in the rulemaking process. In 1993 EPA representatives met with New Mexico residents and government officials to identify the key issues that concern them, the types of information they wanted from EPA, and the best ways to communicate with different sectors of the New Mexico public. The feedback provided by this group of citizens formed the basis for EPA's WIPP communications and consultation plan.

To assist citizens, including a significant Hispanic population in Carlsbad and the nearby Mescalero Indian Reservation, stay abreast of EPA's WIPP-related activities, the Agency developed many informational products and services. EPA translated into Spanish many documents regarding WIPP including educational materials and fact sheets describing EPA's WIPP oversight role and the radioactive waste disposal standards. EPA also established a toll-free WIPP Information Line, recorded in both English and Spanish, providing the latest information on upcoming public meetings, publications, and other WIPP-related activities. EPA also developed a vast mailing list, which includes many low-income and minority groups, to systematically provide interested parties with copies of EPA's public information documents and other materials. EPA will continue its efforts toward open communication and outreach during the development of the final rule.

List of Subjects in 40 CFR Part 194

Environmental protection, Administrative practice and procedure, Nuclear materials, Radionuclides, Plutonium, Radiation protection, Uranium, Transuranics, Waste treatment and disposal.

Dated: October 23, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 194 is proposed to be amended as follows.

PART 194—CRITERIA FOR THE CERTIFICATION AND RE-CERTIFICATION OF THE WASTE ISOLATION PILOT PLANT'S COMPLIANCE WITH THE 40 CFR PART 191 DISPOSAL REGULATIONS

1. The authority citation for part 194 is revised to read as follows:

Authority: The Waste Isolation Pilot Plant Land Withdrawal Act of 1992, Pub. L. 102–579, 106 Stat. 4777, as amended by the 1996 LWA Amendments, Pub. L. 104–201; Reorganization Plan No. 3 of 1970, 5 U.S.C. app. 1; Atomic Energy Act of 1954, as amended, and Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. 2011–2296 and 10101–10270.

2. In § 194.2, a definition is added in alphabetical order to read as follows:

§ 194.2 Definitions.

* * * * *

Administrator's authorized representative means the director in charge of radiation programs at the Agency.

* * * * *

3. Appendix A to Part 194 is added to read as follows:

Appendix A to Part 194—Certification of the Waste Isolation Pilot Plant's Compliance with the 40 CFR Part 191 Disposal Regulations and the 40 CFR Part 194 Compliance Criteria

In accordance with the provisions of the WIPP Compliance Criteria of this part, the Agency finds that the Waste Isolation Pilot Plant ("WIPP") will comply with the radioactive waste disposal regulations at part 191, subparts B and C, of this chapter. Therefore, pursuant to Section 8(d)(2) of the WIPP Land Withdrawal Act ("WIPP LWA"), as amended, the Administrator certifies that the WIPP facility will comply with the disposal regulations. In accordance with the Agency's authority under § 194.4(a), the certification of compliance is subject to the following conditions:

Condition 1: § 194.14(b), Disposal System Design, Panel Seal System. The Department shall implement the panel seal design designated as Option D in Docket A–93–02, Item II–G–1 (October 29, 1996, Compliance Certification Application submitted to the Agency). The Option D design shall be implemented as described in Appendix PCS of Docket Item II–G–1, with the exception that the Department shall use Salado mass concrete (consistent with that proposed for the shaft seal system, and as described in Appendix SEAL of Docket Item II–G–1) instead of fresh water concrete.

Condition 2: § 194.22, Quality Assurance. (a) The Secretary shall not allow any waste generator site other than the Los Alamos National Laboratory to ship waste for disposal at the WIPP until the Agency determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3) and 194.24(c)(5) for waste characterization activities and assumptions.

(b) Upon submission by DOE of site-specific quality assurance program plans, EPA will evaluate the relevant quality assurance program at the relevant waste generator site by conducting a quality assurance audit or an inspection of a DOE quality assurance audit. EPA will publish a notice in the **Federal Register** announcing its intent to evaluate the relevant quality assurance program, and soliciting public comment on the quality assurance program plans and appropriate audit documentation. A public comment period of at least 30 days will be allowed.

(c) EPA's written approval that the requisite quality assurance requirements have been met at a waste generator site will be conveyed in a letter from the Administrator's authorized representative to the Department. No such approval shall be granted until after the end of the public comment period described in paragraph (b) of this condition. A copy of EPA's approval letter will be placed in the public dockets in accordance with § 194.67. The results of any audits or inspections conducted by the Agency to evaluate the quality assurance programs described in paragraph (a) of this condition will also be placed in the dockets described in § 194.67.

(d) EPA will conduct inspections, in accordance with §§ 194.21 and 194.22(e), to confirm the continued compliance of the programs approved under paragraphs (2)(b) and (c) of this condition. The results of such inspections will be made available to the public through the Agency's public dockets, as described in § 194.67.

Condition 3: § 194.24, Waste Characterization. (a) The Secretary may allow shipment for disposal at the WIPP of retrievably stored (legacy) debris waste streams, at the Los Alamos National Laboratory ("LANL"), that can be characterized using the systems and processes documented in Docket A–93–02, Item II–I–70. The Secretary shall not allow shipment of any waste from any other LANL waste streams or from any other waste generator site for disposal at the WIPP until the Agency determines that the site has:

(1) provided information on how process knowledge will be used for waste characterization of the waste stream(s) proposed for disposal at the WIPP,

(2) implemented a system of controls at the site, in accordance with § 194.24(c)(4), to confirm that the total amount of each waste component that will be emplaced in the disposal system will not exceed the upper limiting value or fall below the lower limiting value described in the introductory text of paragraph (c) of § 194.24. The implementation of such a system of controls shall include a demonstration that the site has procedures in place for adding data to the WIPP Waste Information System ("WWIS"), and that such information can be transmitted from that site to the WWIS database; and a demonstration that measurement techniques and control methods can be implemented in accordance with § 194.24(c)(4) for the waste stream(s) proposed for disposal at the WIPP.

(b) The Agency will conduct an audit or an inspection of a DOE audit for the purpose of evaluating the use of process knowledge and the implementation of a system of controls for each waste stream or group of waste streams at a waste generator site. The Agency will announce a scheduled audit or inspection in the **Federal Register**. In that notice, the Agency will also solicit public comment on all appropriate audit documentation, which will be placed in the dockets described in § 194.67. A public comment period of at least 30 days will be allowed.

(c) EPA's written approval of the waste characterization programs described in paragraph (a) of this condition for one or more waste streams from a waste generator site will be conveyed in a letter from the Administrator's authorized representative to the Department. No such approval shall be granted until after the end of the public comment period described in paragraph (b) of this condition. A copy of EPA's approval letter will be placed in the public dockets in accordance with § 194.67. The results of any inspections or audits conducted by the Agency to evaluate the plans described in paragraph (a)(1) and (2) of this condition will also be placed in the dockets described in § 194.67.

(d) The Administrator's authorized representative(s) will conduct inspections, in accordance with §§ 194.21 and 194.24(h), to confirm the continued compliance of the plans approved under paragraphs (b) and (c) of this condition. The results of such inspections will be made available to

the public through the Agency's public dockets, as described in § 194.67.

Condition 4: § 194.43, Passive Institutional Controls. (a) Not later than the final re-certification application submitted prior to closure of the disposal system, the Department shall provide, to the Administrator or the Administrator's authorized representative:

(1) a schedule for implementing passive institutional controls that has been revised to show that markers will be fabricated and emplaced, and other measures will be implemented, as soon as possible following closure of the WIPP. Such a schedule should describe how testing of any aspect of the conceptual design will be completed prior to or soon after closure, and what changes to the design of passive institutional controls may be expected to result from such testing.

(2) documentation showing that the granite pieces for the proposed monuments and information rooms described in Docket A–93–02, Item II–G–1, and supplementary information may be: quarried (cut and removed from the ground) without cracking due to tensile stresses from handling or isostatic rebound; engraved on the scale required by the design; transported to the site, given the weight and dimensions of the granite pieces and the capacity of existing rail cars and rail lines; loaded, unloaded, and erected without cracking based on the capacity of available equipment; and successfully joined.

(3) documentation showing that archives and record centers will accept the documents identified and will maintain them in the manner identified in Docket A–93–02, Item II–G–1.

(4) documentation showing that proposed recipients of WIPP information other than archives and record centers will accept the information and make use of it in the manner indicated by DOE in Docket A–93–02, Item II–G–1 and supplementary information.

(b) Upon receipt of the information required under paragraph (a) of this condition, EPA will place such documentation in the public dockets identified in § 194.67. The Agency will determine if a modification to the compliance certification in effect is necessary. Any such modification will be conducted in accordance with the requirements at §§ 194.65 and 194.66.

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October 30, 1997

Part IV

Environmental Protection Agency

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00218; FRL–5737–3]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) is developing Acute Exposure Guideline Levels (AEGLs) on an on going basis to assist Federal and State agencies and private sector organizations with their needs for short-term hazardous chemical exposure information (one time only exposures during chemical emergency situations). The NAC/AEGL Committee has completed work on "Proposed AEGLs" for 12 chemicals. The purpose of today's notice is to solicit comments on proposed values and the accompanying scientific rationale for their development. More specifically, this notice solicits comments on the proposed AEGL values, the methodologies used to determine no-observed-adverse-effect-levels (NOAELs) or lowest-observed-adverse-effect-levels (LOAELs) for specific effects, the uncertainty factors selected for intraspecies and interspecies extrapolation, the uncertainty factors used to accommodate for sensitive or susceptible individuals in the human population, the use of modifying factors and the values applied, and other aspects related to the development of the AEGL values.

DATES: Submit written comments on or before December 1, 1997.

ADDRESSES: Submit three copies of written comments on the Proposed AEGLs, identified by docket control number (OPPTS–00218; FRL– 5737–3) to: Environmental Protection Agency, Office of Pollution Prevention and Toxics (OPPT), Document Control Office (7407), Rm. G–009, 401 M St., SW., Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit V. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability

Internet

Electronic copies of this notice and various support documents are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

Fax-On-Demand

Using a faxphone call (202) 401–0527 and select item 3800 for an index of items in this category. For a more specific item number, see the table in Unit IV. of this document.

I. Introduction

EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) provided notice on October 31, 1995 (60 FR 55376 (FRL–4987–3)) of the establishment of the NAC/AEGL Committee with the objective stated in the charter as "the efficient and effective development of Acute Exposure Guideline Levels (AEGLs) and the preparation of supplementary qualitative information on the hazardous substances for federal, state, and local agencies and organizations in the private sector concerned with [chemical] emergency planning, prevention, and response." The NAC/AEGL Committee is a discretionary Federal advisory committee formed with the intent to develop AEGLs for chemicals through the combined efforts of stakeholder members from both the public and private sectors using a cost-effective approach that avoids duplication of efforts and provides uniform values, while employing the most scientifically sound methods available. An initial priority list of 85 chemicals for AEGL development was published May 21, 1997 (62 FR 27734 (FRL–5718–9)). This list is intended to be expanded and also may be modified as priorities of the stakeholder member organizations are further developed.

While the development of AEGLs for chemicals is not statutorily based; at least one EPA rulemaking references their planned adoption. In the final Clean Air Act and Amendment section 112 Risk Management rulemaking (June 20, 1996, 61 FR 31685, (FRL–5516–5)), "EPA recognizes potential limitations associated with the Emergency Response Planning Guidelines and Level of Concern and is working with other agencies to develop AEGLs. When these values have been developed and peer-reviewed, EPA intends to adopt them, through rulemaking, as the toxicity reference for substances under this rule." Federal and State agencies and private organizations may also adopt AEGLs for chemical emergency programs in the future.

The NAC/AEGL Committee meets four times per year and plans to develop AEGL values for 30–40 chemicals per year during the next 8 to 10 years. Since its first meeting on June 19–21, 1996, the NAC/AEGL Committee has completed work on "Proposed AEGLs" for 12 chemicals. The basic approach and guidance used to derive AEGLs has been the National Academy of Sciences (NAS) publication, "Guidelines for Developing Community Emergency Exposure Levels for Hazardous Substances" (National Academy Press, Washington, DC, 1993; copies are available in the Docket). The NAC/AEGL Committee meetings have been public and numerous public comments and presentations have been made. At this time, the NAC/AEGL Committee is providing further opportunity for public input through this notice. Comments are welcome on both the AEGL values and their related Technical Support Documents (filed in the public Docket).

The NAC/AEGL Committee will review comments received and revise the Proposed AEGLs as deemed appropriate. The resulting values will be established as "Interim AEGLs" and will be available for use in various public and private sector programs on human health effects related to short-term exposures to hazardous chemicals. It is planned that Interim AEGLs will be forwarded to the National Research Council, National Academy of Sciences (NRC/NAS) for further review, collaboration with the NAC/AEGL Committee, and possible revision of the

AEGL values and the methodologies used to derive them. It is anticipated that "Final AEGLs" will be published under the auspices of the NAS following concurrence on the values and the scientific rationale used for their development. Until Final AEGLs are published by the NAS, the Interim AEGLs are intended for use as needed by individuals or organizations in both the public and private sectors.

II. Characterization of the AEGLs

The AEGLs represent short-term threshold or ceiling exposure values intended for the protection of the general public, including susceptible or sensitive individuals, but not hypersusceptible or hypersensitive individuals. The AEGLs represent biological reference values for this defined human population and consist of three biological endpoints for each of four different exposure periods of 30 minutes (mins), 1 hour (hr), 4 hours (hrs), and 8 hrs. In certain instances, AEGL values have been and will be developed for additional exposure periods of 5 or 10 mins. The biological endpoints include AEGL–1, AEGL–2, and AEGL–3 and are defined as follows:

AEGL–1 is the airborne concentration (expressed as parts per millions (ppm) or milligrams (mg)/meters (m)^3) of a substance at or above which it is predicted that the general population, including "susceptible" but excluding "hypersusceptible" individuals, could experience notable discomfort. Airborne concentrations below AEGL–1 represent exposure levels that could produce mild odor, taste, or other sensory irritations.

AEGL–2 is the airborne concentration (expressed as ppm or mg/m^3) of a substance at or above which it is predicted that the general population, including "susceptible" but excluding "hypersusceptible" individuals, could experience irreversible or other serious, long-lasting effects or impaired ability to escape. Airborne concentrations below the AEGL–2 but at or above AEGL–1 represent exposure levels that may cause notable discomfort.

AEGL–3 is the airborne concentration (expressed as ppm or mg/m^3) of a substance at or above which it is predicted that the general population, including "susceptible" but excluding "hypersusceptible" individuals, could experience life-threatening effects or death. Airborne concentrations below AEGL–3 but at or above AEGL–2 represent exposure levels that may cause irreversible or other serious, long-lasting effects or impaired ability to escape.

III. Development of the AEGLs

The NAC/AEGL Committee develops the AEGL values on a chemical-by-chemical basis. Relevant data and information are gathered from all known sources including published scientific literature, State and Federal agency publications, private industry, public data bases, and individual experts in both the public and private sectors. All key data and information are summarized for the NAC/AEGL Committee in draft form by Oak Ridge National Laboratories and "Draft AEGL" values are prepared in conjunction with designated NAC/AEGL Committee members. Both the Draft AEGLs and draft technical support documents are reviewed and revised as necessary by the NAC/AEGL Committee members prior to formal NAC/AEGL Committee meetings. Following deliberations on the Draft AEGL values and the relevant data and information for each chemical presented at the meeting, the NAC/AEGL Committee attempts to reach a consensus on acceptable values. Once the NAC/AEGL Committee reaches a consensus, the values are considered "Proposed AEGLs." The Proposed AEGL values and the accompanying scientific rationale for their development are the subject of this notice.

In this notice the NAC/AEGL Committee publishes Proposed AEGL values and the accompanying scientific rationale for their development for 12 hazardous substances. These values represent the first exposure levels proposed and published by the NAC/AEGL Committee. In developing the proposed AEGL values, the NAC/AEGL Committee has followed the methodology guidance "Guidelines for Developing Community Emergency Exposure Levels for Hazardous Substances," published by the National Research Council of the National Academy of Sciences (NAS) in 1993 (copies of this guidance document are available for review in the Docket). The term Community Emergency Exposure Levels (CEELs) used by the NAS is synonymous with AEGLs in every way. The NAC/AEGL Committee has adopted the term Acute Exposure Guideline Levels or AEGLs to better connote the broad application of the values to the population defined by the NAS in its guidance document and addressed by the NAC/AEGL Committee in its development of the AEGLs. The NAC/AEGL Committee invites public comment on the Proposed AEGL values and the scientific rationale used as the basis for their development.

Following public review and comment, the NAC/AEGL Committee will reconvene to consider relevant comments, data and information that may have an impact on the NAC/AEGL Committee's proposed values and will again seek consensus for the establishment of "Interim AEGL" values. Although the Interim AEGL values will be available to Federal, State, and local agencies and to organizations in the private sector as biological reference values, it is intended to have them reviewed by a subcommittee of the NAS. It has been planned to have the NAS subcommittee participate in the peer review of the Interim AEGLs and in the resolution of issues regarding the AEGL values and the data and basic methodology used for setting AEGLs. It is anticipated that "Final AEGL" values will be published under the auspices of the NAS.

IV. List of Twelve Chemicals With Proposed AEGL Values

CAS No.	Chemical name	Fax-On-Demand item no.
57–14–7 ...	1,1–Dimethylhydrazine	3852
60–34–4 ...	Methylhydrazine	3853
62–53–3 ...	Aniline	3854
75–21–8 ...	Ethylene oxide	3861
302–01–2	Hydrazine	3891
540–59–0	1,2–Dichloroethene	3895
540–73–8	1,2–Dimethylhydrazine	3852
7697–37–2	Nitric acid	3912
7782–41–4	Fluorine	3915
7782–50–5	Chlorine	3916
7784–42–1	Arsine	3921
7803–51–2	Phosphine	3923

Chemicals With Proposed AEGLs (Alphabetical Order)

Aniline

Aniline is an aromatic amine used chiefly in the chemical industry in the manufacture of dyes, dye intermediates, rubber accelerators, antioxidants, drugs, photographic chemicals, isocyanates, herbicides, and fungicides. The primary effect of an acute exposure to aniline is on the hemoglobin of the red blood cell, resulting in the formation of methemoglobin. The effect may occur following inhalation, ingestion, or cutaneous absorption. In addition to methemoglobinemia, chronic exposures or exposures to high concentrations may produce signs and symptoms of headache, paresthesia, tremor, pain,

narcosis/coma, cardiac arrhythmia, and possibly death.

All AEGL values are based on a study in which rats were exposed to concentrations of 0, 10, 30, 50, 100, or 150 ppm for 8 hrs (Kim and Carlson, 1986). The only reported effect was formation of methemoglobin. At a constant concentration (100 ppm), the formation of methemoglobin over time was basically linear, reaching an asymptote at 8 hrs.

The AEGL–1 was based on a concentration of 100 ppm for 8 hrs which resulted in elevation of methemoglobin from a control value of 1.1% (range, 0.4–2.1%) to 22%. This level of methemoglobin results in clinical cyanosis but no hypoxic symptoms. Additional studies on oral ingestion showed that humans are much more sensitive than rats to aniline exposure as indicated by formation of methemoglobin. Thus, an uncertainty factor of 10 was used for interspecies extrapolation. Several sources also indicate that newborns are more sensitive to methemoglobin-forming chemicals than adults; thus, an intraspecies uncertainty factor of 10 was applied. The data were scaled across time using $C^1 \times t = k$ (the relationship between concentration of aniline and methemoglobin formation at a fixed time [8 hrs] is linear as is the relationship between time and severity of effect when concentration is held constant; in addition, data from several lethality [LC_{50}] studies show that the relationship between C and t is linear).

The AEGL–2 was based on the same study with rats in which a concentration of 150 ppm for 8 hrs resulted in elevation of methemoglobin from a control value of 1.1% to 41%. This level of methemoglobin is associated with fatigue, lethargy, exertional dyspnea, and headache in humans and was considered the threshold for disabling effects. The 150 ppm concentration was divided by a combined uncertainty factor of 100 and scaled across time using the same reasons and relationships as for the AEGL–1 above. Because of the small data base and the lack of recent, reliable human inhalation studies, uncertainty factors of 10 were applied for each of the interspecies and intraspecies variabilities.

Data on concentrations of aniline inducing methemoglobin levels at the threshold for lethality were not available. Based on the fact that the relationship between concentration of aniline and methemoglobin formation is linear, the dose-response curve from the study on which the AEGL–1 and AEGL–2 were based was extrapolated to a concentration resulting in >70% formation of methemoglobin, the threshold for lethality. The concentration of 250 ppm for 8 hrs was chosen as the threshold for lethality. The AEGL–3 was based on dividing the 250 ppm value by a combined uncertainty factor of 100 and scaled across time using the same reasons and relationships as for the AEGL–1 above. The uncertainty factors of 10 for each of the interspecies and intraspecies variabilities are supported by the small data base of information and the lack of recent, reliable human inhalation studies.

Studies with repeated exposures at approximately the same concentrations in the rat resulted in additional effects on the blood and spleen, but concentrations up to 87 ppm, 6 hrs/day, 5 days/week, for 2 weeks were not disabling or life-threatening. The calculated values are listed in the table below. Because aniline is absorbed through the skin, a skin notation was added to the summary table.

SUMMARY TABLE OF PROPOSED AEGL VALUES FOR ANILINE [a]

Classification	30-minute	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL–1	16 ppm (61 mg/m^3)	8.0 ppm (30 mg/m^3)	2.0 ppm (7.6 mg/m^3)	1.0 ppm (3.8 mg/m^3)	22% methemoglobin—cyanosis (Kim and Carlson, 1986)
AEGL–2	24 ppm (91 mg/m^3)	12 ppm (46 mg/m^3)	3.0 ppm (11 mg/m^3)	1.5 ppm (5.7 mg/m^3)	41% methemoglobin—lethargy (Kim and Carlson, 1986)
AEGL–3	40 ppm (152 mg/m^3)	20 ppm (76 mg/m^3)	5.0 ppm (19 mg/m^3)	2.5 ppm (9.5 mg/m^3)	>70% methemoglobin—lethality (extrapolated from data of Kim and Carlson, 1986)

[a] Cutaneous absorption may occur; direct skin contact with the vapor or liquid should be avoided.

References

1. Kim, Y.C. and G.P. Carlson. 1986. The effect of an unusual workshift on chemical toxicity. Part II. Studies on the exposure of rats to aniline. *Fundamental and Applied Toxicology* 7:144–152.

Arsine

Arsine is an extremely toxic, colorless gas used in the semiconductor industry. Exposure to arsine may also result from mining and manufacturing processes involving arsenicals, and from paints and herbicides containing arsenicals.

Arsine is a potent hemolytic agent, ultimately causing death via renal failure. Numerous human case reports are available documenting the extreme toxicity of arsine exposure but these reports lack definitive quantitative exposure data.

Exposure-response data from animal studies were used to derive AEGL values for arsine. AEGL values derived with animal data were more conservative than AEGLs estimated from limited anecdotal human data. The greater conservatism afforded by the animal data may be justified by the incomplete and often equivocal data for human exposures, the documented extreme toxicity of arsine, and the known latency involved in arsine-induced lethality. The AEGL values for the various exposure periods of concern (0.5, 1, 4, and 8 hrs) were scaled from the experimental exposure duration using exponential scaling ($C^2 \times t = k$), where n = 2 represented an estimate of the concentration-time relationship. The concentration exposure time relationship for many irritant and systemically acting vapors and gases may be described by $c^n \times t = k$, where the exponent, n, ranges from 1 to 3.5 (ten Berge et al 1986). The mid-point value of 2 was used as the exponent n for scaling the AEGL values for arsine across time, because no exposure versus time data were available.

Based upon the available data, derivation of AEGL–1 values was considered to be inappropriate. The available human and animal data affirm that there is little margin between exposures that result in little or no signs of toxicity and those that result in lethality. The mechanism of arsine toxicity (induction of hemolysis that may rapidly result in renal failure and death), and the fact that toxicity in animals and humans has been demonstrated at concentrations at or below the odor threshold also support

such a conclusion by the NAC/AEGL Committee.

The AEGL–2 values were based upon exposure levels that did not result in significant alterations in hematologic parameters in mice exposed to arsine for 1 hr (Peterson and Bhattacharyya, 1985). AEGL–2 derivations based upon several data sets were similar, thereby providing validation to the proposed AEGLs. Derivation of AEGLs based upon limited data for humans resulted in values indicative of potentially hazardous exposures. Uncertainty factor application included a factor of 10 for interspecies variability because of uncertainties regarding species-specific sensitivity to arsine-induced hemolysis. Uncertainty regarding intraspecies variability was limited to 3 because the hemolytic response to arsine is not expected to vary greatly among individuals.

The AEGL–3 values were based upon data assessing the lethality in mice exposed to arsine for 1 hr (Peterson and Bhattacharyya, 1985). A total uncertainty factor application of 30 was applied as for AEGL–2 values and for the same reasons. Derivation of AEGL–3 values using limited data in monkeys affirmed the values derived based upon the mouse data. AEGL–3 values derived from limited human exposure data resulted in levels considered potentially hazardous.

The three AEGL exposure levels reflect the narrow range between exposures resulting in minor effects and those producing lethality. A conservative approach in the development of AEGLs for arsine was justified by the known steep dose-response curve, the induction of hemolysis by arsine at extremely low concentrations, and the potential of hemolysis to progress to life-threatening renal failure.

SUMMARY OF PROPOSED AEGL VALUES FOR ARSINE

Classification	30-minute	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL–1	NA[a]	NA[a]	NA[a]	NA[a]	Inappropriate based upon steep dose-response relationship, mechanism of toxicity, and because toxicity occurs at or below the odor threshold
AEGL–2	0.24 ppm (0.8 mg/m^3).	0.17 ppm (0.5 mg/m^3).	0.08 ppm (0.3 mg/m^3).	0.06 ppm (0.3 mg/m^3).	Absence of significant hematological alterations in mice consistent with the known continuum of arsine toxicity (Peterson and Bhattacharyya, 1985)
AEGL–3	0.7 ppm (2.2 mg/m^3).	0.5 ppm (1.6 mg/m^3).	0.25 ppm (0.8 mg/m^3).	0.18 ppm (0.6 mg/m^3).	Estimated threshold for nonlethality in mice (Peterson and Bhattacharyya, 1985)

[a] NA Not appropriate

References

1. Peterson, D.P. and Bhattacharyya, M.H. 1985. Hematological responses to arsine exposure: quantitation of exposure response in mice. *Fundamental and Applied Toxicology* 5:499–505.

Chlorine

Chlorine is a greenish-yellow, highly reactive halogen gas with a pungent, suffocating odor. Like other halogens, chlorine does not occur in the elemental state in nature; it rapidly combines with both inorganic and organic substances. Chlorine is used in the manufacture of a wide variety of chemicals, as a bleaching agent in industry and household products, and as a biocide in water and waste treatment plants.

Chlorine is an irritant to the eyes and respiratory tract; reaction with moist surfaces produces hydrochloric and hypochlorous acids. Its irritant properties have been studied in human volunteers and its acute inhalation toxicity has been studied in several laboratory animal species. The data from the human and laboratory animal studies were sufficient for development of three AEGLs for four time periods (i.e., 30 mins and 1, 4, and 8 hrs). Probit and regression analyses of the animal exposure time-concentration-mortality data determined that the relationship between concentration and time is approximately $C^2 \times t = k$.

The AEGL–1 was based on the observation that exposure to human volunteers, including a sensitive individual, of 0.5 ppm for 4 hrs produced no sensory irritation but did result in transient changes in some pulmonary function parameters for the sensitive individual (Rotman et al., 1983). Because both sexes were tested and all subjects were undergoing light exercise, making them more vulnerable to sensory irritation, and because a sensitive individual was included in the test, no uncertainty factor to account for differences in human sensitivity was applied. The 0.5 ppm exposure for 4 hrs was scaled to the other time periods using the relationship $C^2 \times t = k$. The scaling factor n = 2 was based on probit and regression analyses of animal lethality data.

The AEGL–2 values were derived based on the same study (Rotman et al., 1983) in which healthy human subjects experienced transient changes in pulmonary function measurements and a sensitive individual experienced an asthmatic attack (shortness of breath and wheezing) at a concentration of 1 ppm for 4 hrs. The sensitive individual remained in the exposure chamber for the full 4 hrs. Because both sexes were tested and all subjects were undergoing light exercise, making them more vulnerable to sensory irritation, and because a sensitive individual was included in the test, no uncertainty factor to account for differences in human sensitivity was applied. The 4-hr 1 ppm concentration was scaled to the other time periods using the $C^2 \times t = k$ relationship. The scaling factor or exponent of n = 2 is based on probit and regression analyses of animal lethality data.

In the absence of human data, the AEGL–3 values were based on animal lethality data. Because the mouse was shown to be more sensitive than other mammals to irritant gases including chlorine and does not provide an appropriate basis for quantitatively predicting mortality in humans, a value below that resulting in no deaths in the rat, 213 and 322 ppm in two studies (MacEwen and Vernot, 1972; Zwart and Woutersen, 1988) and above that resulting in no deaths in the mouse (150 ppm) for exposure periods of 1 hr was chosen. Mice exposed to chlorine experienced delayed deaths attributable to bronchopneumonia. The AEGL–3 values were derived from a 1-hr concentration of 200 ppm. This value was divided by a combined uncertainty factor of 10. An uncertainty factor of 3

was used to extrapolate from rats to humans, since interspecies values for the same endpoint differed by a factor of approximately 2 within each of several studies. An uncertainty factor of 3 was used to account for differences in human sensitivity, since the toxic effect is due to a chemical reaction with biological tissue of the respiratory tract which is unlikely to be different among individuals. The AEGL–3 values were scaled to the other exposure periods based on the $C^2 \times t = k$ relationship. The scaling factor or exponent of n = 2 is based on probit and regression analyses of animal lethality data.

Based on the large data base and the extensive, well-conducted studies, confidence in the AEGL values is high. The calculated values are listed in the table below.

SUMMARY OF PROPOSED AEGL VALUES FOR CHLORINE

Classification	30-minute	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL–1	1.4 ppm (4.1 mg/m³).	1.0 ppm (2.9 mg/m³).	0.5 ppm (1.5 mg/m³).	0.5 ppm (1.5 mg/m³).	Pulmonary function—human (Rotman et al., 1983)
AEGL–2	2.8 ppm (8.1 mg/m³).	2.0 ppm (5.8 mg/m³).	1.0 ppm (2.9 mg/m³).	0.7 ppm (2.0 mg/m³).	Asthmatic attack—human (Rotman et al., 1983)
AEGL–3	28 ppm (81 mg/m³).	20 ppm (58 mg/m³).	10 ppm (29 mg/m³).	7.1 ppm (21 mg/m³).	Lethality—rat (MacEwen and Vernot, 1972; Zwart and Woutersen, 1988)

References

1. MacEwen, J.D. and E.H. Vernot. 1972. Toxic Hazards Research Unit Annual Technical Report: 1972. AMRL-TR-72–62, Aerospace Medical Research Laboratory, Wright-Patterson Air Force Base, OH; National Technical Information Service, Springfield, VA.

2. Rotman, H.H., M.J. Fliegelman, T. Moore, R.G. Smith, D.M. Anglen, C.J. Kowalski, and J.G. Weg. 1983. Effects of low concentration of chlorine on pulmonary function in humans. *Journal of Applied Physiology* 54:1120–1124.

3. Zwart, A. and R.A. Woutersen. 1988. Acute inhalation toxicity of chlorine in rats and mice: time-concentration-mortality relationships and effects on respiration. *Journal of Hazardous Material* 19:195–208.

1,2-Dichloroethene

1,2-dichloroethene is a flammable, colorless liquid existing in both *cis-* and *trans-* forms and as a mixture of these two isomers. It has been used as an intermediate in the production of chlorinated solvents and as a low-temperature extraction solvent for decaffeinated coffee, dyes, perfumes, lacquers, and thermoplastics. The compound is a narcotic. Data on narcosis in humans, cats, rats, and mice, and systemic effects in cats, rats, and mice were available for development of AEGLs. The data were considered adequate for derivation of the three AEGL classifications for four time periods.

The AEGL–1 was based on a human exposure concentration of 1,100 ppm *trans*-1,2-dichloroethene for 5 mins (Lehmann and Schmidt-Kehl 1936). Although this is a no-effect-level for narcotic effects it represents a concentration that is above the odor threshold. Because of the mode of action and similarity in response to this chemical as an irritant, this value was divided by an uncertainty factor of 3 to protect sensitive individuals and by a modifying factor of 2 to account for the probable difference in toxicity between the *cis-* and *trans-* isomers. It was then scaled to the 30-min, 1-, 4-, and 8-hr exposures using the $c^n \times t = k$ relationship, where n = 2. The concentration: exposure time relationship for many irritant and systemically acting vapors and gases may be described by $c^n \times t = k$, where the exponent, n, ranges from 1 to 3.5 (ten Berge et al 1986). Because no exposure versus time data were available, the mid-point value of 2 was used as the exponent n for scaling the AEGL values for dichloroethene across time.

The AEGL–2 was based on slight dizziness in humans exposed to 3300 ppm *trans*-1,2-dichloroethene for 5 mins (Lehmann and Schmidt-Kehl 1936). Because of the mode of action and similarity in response to this chemical, this value was divided by an uncertainty factor of 3 to protect sensitive individuals and by a modifying factor of 2 to account for the probable difference in toxicity between the *cis-* and *trans-* isomers. It was then scaled up to the 30-minute (min), 1-, 4-, and 8-hr exposure periods using the $c^n \times t = k$ relationship, where the mid-point of the exponential range n = 2 was used.

The AEGL–3 was based on fibrous swelling and hyperemia of cardiac muscle with little striation in rats exposed to 3000 ppm *trans*-1,2-dichloroethene for 8 hrs. Because the lethality data are limited and quite variable across species for the data that do exist this value was divided by an uncertainty factor of 10 to account for interspecies variation. An additional uncertainty factor of 3 was applied to protect sensitive individuals and a modifying factor of 2 was also applied to account for the probable difference in toxicity between the *cis-* and *trans-* isomers. The 8-hr AEGL value was then scaled to the 30-min, 1-, and 4-hr exposures using the $c^n \times t = k$ relationship, where the midpoint of the experimental range n = 2 was used. The calculated values are listed in the table below.

SUMMARY OF PROPOSED AEGL VALUES FOR 1,2-DICHLOROETHENE

Classification	30-minute	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL–1 (Nondisabling)	19 ppm (75 mg/m³)	13 ppm (53 mg/m³)	6.6 ppm (26 mg/m³)	4.7 ppm (19 mg/m³)	No effect in humans (Lehmann and Schmidt-Kehl, 1936)
AEGL–2 (Disabling)	56 ppm (224 mg/m³)	40 ppm (160 mg/m³)	20 ppm (80 mg/m³)	14 ppm (56 mg/m³)	Slight dizziness in humans (Lehmann and Schmidt-Kehl, 1936)

SUMMARY OF PROPOSED AEGL VALUES FOR 1,2-DICHLOROETHENE—Continued

Classification	30-minute	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL–3 (Lethality)	200 ppm (800 mg/m^3)	141 ppm (564 mg/m^3)	71 ppm (284 mg/m^3)	50 ppm (200 mg/m^3)	Fibrous swelling and hyperemia of cardiac muscle with poorly maintained striation in rats (Freundt et al., 1977)

References

1. Freundt, K.J., Liebalt, G.P., and Lieberwirth, E. 1977. Toxicity studies on trans-1,2-dichloroethylene. *Toxicology* 7:141–153.

2. Lehmann, K.B. and Schmidt-Kehl, L. 1936. The thirteen most important chlorinated aliphatic hydrocarbons from the standpoint of industrial hygiene. *Archive Fur Hygiene* 116:9–268.

3. ten Berge, W.F., Zwart. A, and Appelman, L.M. 1986. Concentration-time mortality response relationship of irritant and systemically acting vapours and gases. *Journal of Hazardous Materials* 13:301–309.

1,1- and 1,2-Dimethylhydrazine

Dimethylhydrazine occurs as a symmetrical (1,2-dimethylhydrazine) and asymmetrical (1,1-dimethylhydrazine) isomer. Both compounds are clear, colorless liquids. Asymmetrical dimethylhydrazine (1,1-dimethylhydrazine) is a component of jet and rocket fuels and is also used as an absorbent for acid gas, as a plant growth control agent, and in chemical synthesis. Although it has been evaluated as a high-energy rocket fuel, commercial use of the symmetrical isomer (1,2-dimethylhydrazine) is limited to small quantities and it is usually considered to be a research chemical. Because data are limited for 1,2-dimethylhydrazine (symmetrical dimethylhydrazine), the AEGL values are based upon 1,1-dimethylhydrazine (asymmetrical). Limited data suggest that1,1-dimethylhydrazine may be somewhat more toxic than 1,2-dimethylhydrazine.

Data on acute exposures of humans to both isomers of dimethylhydrazine are limited to case reports of accidental exposures. Signs and symptoms of exposure include respiratory irritation, pulmonary edema, nausea, vomiting, and neurological effects. However, definitive exposure data (concentration and duration) were unavailable for these exposures.

Toxicity data of varying degrees of completeness are available for several laboratory species, including, rhesus monkeys, dogs, rats, mice, and hamsters (Weeks et al., 1963). Most of the animal studies were conducted using 1,1-dimethylhydrazine, although limited data suggest that 1,2-dimethylhydrazine exerts similar toxic effects. Minor nonlethal effects such as respiratory tract irritation appear to occur at cumulative exposures of <100 (ppm)(hrs). At cumulative exposures at or only slightly greater than 100 (ppm)(hrs), more notable effects have been reported, including, muscle fasciculation, behavioral changes, tremors, and convulsions. At only slightly higher exposure levels, lethality has been demonstrated. The available data suggest that there is very little margin between exposure levels resulting in no significant toxicity and those causing substantial lethality (LC_{50} ≈900–2,000 ppm hrs).

Developmental toxicity of dimethylhydrazines has been demonstrated in rats following parenteral administration of maternally toxic doses. Both isomers of dimethylhydrazine have been shown to be carcinogenic in rodents following oral exposure and 6-month inhalation to 1,1-dimethylhydrazine resulted in an increased tumor response in mice, although these findings are compromised by the contaminant dimethylnitrosamine. Inhalation slope factors are currently unavailable. It was the consensus of the NAC/AEGL Committee that AEGL–1 values for dimethylhydrazine are inappropriate. This conclusion was based upon the onset of toxic effects at or below the odor threshold, and a concentration-response relationship for dimethylhydrazine that indicated little margin between exposures producing no toxic response and those resulting in significant toxicity.

Behavioral changes and muscle fasciculations in dogs exposed for 15 mins to 360 ppm 1,1-dimethylhydrazine (Weeks et al., 1963) served as the basis for deriving AEGL–2 values. Following temporal scaling ($C^1 \times t = k$) to AEGL-specific exposure durations, the values were adjusted by an uncertainty factor of 30. An uncertainty factor of 3 for interspecies variability was applied because the toxic response to dimethylhydrazine was similar across the species tested. An uncertainty factor of 10 for intraspecies variability was applied because of the uncertainties regarding the mechanism of action of dimethylhydrazine toxicity and its impact on susceptible individuals.

The AEGL–3 was derived from the 1-hr LC_{50} (981 ppm) for 1,1-dimethylhydrazine in dogs (Weeks et al., 1963). Because of the steep slope of the dose-response curve of 1,1-dimethyl hydrazine, a modifying factor of 3 was applied to the 1-hr LC_{50} of 981 ppm. Hence, the modified lethality threshold used to determine the AEGL–3 was 327 ppm. The downward adjustment of the LC_{50} using a modification factor of 3 was considered a conservative approach and, in part, justified the total uncertainty factor of 30 (3 for interspecies variability and 10 for intraspecies variability). An uncertainty factor of 3 for interspecies variability was applied because the toxic response to dimethylhydrazine was similar across the species tested. An uncertainty factor of 10 for intraspecies variability was applied because of the uncertainties regarding the mechanism of action of dimethylhydrazine toxicity and its potential impact on susceptible individuals. Temporal scaling as previously described was applied to obtain exposure values for AEGL-specific exposure periods.

An estimation of AEGLs based upon carcinogenic potential resulting from a one time, short term exposure was conducted and the assessment revealed that AEGLs derived from carcinogenic toxicity for a 10^{-4} carcinogenic risk exceeded AEGL–3 values based on non cancer endpoints. The relationship of the various AEGL values reflects the exposure-response relationship shown by available animal data.

SUMMARY OF PROPOSED AEGL VALUES FOR 1,1- AND 1,2-DIMETHYLHYDRAZINES

Classification	30-minute	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL–1	NA[b]	NA[b]	NA[b]	NA[b]	Inappropriate because notable toxicity may occur at concentrations below the odor threshold; concentration-response relationships suggest little margin between exposures causing minor effects and those resulting in serious toxicity.[a]
AEGL–2	6 ppm (14.7 mg/m^3)	3 ppm (7.4 mg/m^3)	0.8 ppm (2 mg/m^3)	0.4 ppm (1 mg/m^3)	Behavioral changes and muscle fasciculations in dogs exposed to 360 ppm for 15 mins (Weeks et al., 1963)
AEGL–3	22 ppm (54 mg/m^3)	11 ppm (27 mg/m^3)	3 ppm (7.4 mg/m^3)	1.5 ppm (3.7 mg/m^3).	Lethality threshold of 327 ppm for 1-hr estimated from 1-hr LC_{50} in dogs (Weeks et al., 1963)

[a]Refer to AEGL–1 for hydrazine if hydrazine is also present.
[b]NA Not appropriate

References

1. Weeks, M.H., Maxey, G.C., Sicks, and Greene, E.A. 1963. Vapor toxicity of UDMH in rats and dogs from short exposures. *American Industrial Hygiene Association Journal* 24:137–143.

Ethylene Oxide

Ethylene oxide is a highly flammable gas produced in very large quantities in the United States (5.3–6.3 billion pounds). It is very reactive with nucleophiles, such as water, alcohols, halides, amines, and sulfhydryl compounds. Ethylene oxide is used as an intermediate in the production of ethylene glycol and nonionic surfactants; a small amount is used as a fumigant for sterilizing foods and heat-sensitive medical equipment. The odor detection level for ethylene oxide is 260 ppm (468 mg/m^3) to 700 ppm (1,260 mg/m^3).

The database of toxicity to ethylene oxide vapor in humans and experimental animals is very extensive including data on all aspects of toxicity except lethality in humans. Pharmacokinetics data show that ethylene oxide is readily absorbed from the respiratory tract of both humans and animals. It alkylates proteins and DNA, and it is metabolized by hydrolysis and glutathione conjugation.

In humans, inhaled ethylene oxide vapor affects the eyes, respiratory tract, central and peripheral nervous systems, gastrointestinal tract (probably secondary effects to nervous system toxicity), hematopoietic system, and possibly the reproductive system, and fetus. Acute exposure to ethylene oxide at the odor detection level (≥260 ppm) causes eye and upper respiratory tract irritation and signs and symptoms of effects on the central and peripheral nervous system. Acute exposure to a calculated concentration of 500 ppm for 2 to 3 minutes caused hematologic effects and more severe effects on the central nervous system than those noted at the odor detection level. Effects observed after acute exposure are reversible, including severe nervous system effects. Peripheral nervous damage is exacerbated by repeated exposures. Human studies have provided suggestive evidence of reproductive toxicity, some evidence of an association between exposure to ethylene oxide and genetic damage to somatic cells and limited evidence of carcinogenicity.

Acute lethality studies in experimental animals showed that mice are the most sensitive species (4-hrs LC^{50} = 660–835 ppm) (Jacobson et al., 1956), followed by the dog (4-hrs LC^{50} = 960 ppm) (Jacobson et al., 1956) and rat (4-hrs LC^{50} = 1537–1972 ppm; 1-hr LC^{50} = 4439–5748 ppm) (Jacobson et al., 1956). Immediate deaths were due to respiratory failure and delayed deaths were due to secondary respiratory infections. Experimental animals exposed to lethal and nonlethal concentrations of ethylene oxide showed evidence of eye and respiratory irritation and effects on the central and peripheral nervous system (Embree et al., 1977). Additional studies in animals exposed to ethylene oxide for various durations up to 6 hrs/day provided evidence of reproductive toxicity at ≥50 ppm, developmental toxicity at ≥50 ppm, genetic toxicity in germ cells at ≥75 ppm, and carcinogenicity at 100 ppm.

Data were available for deriving AEGL–2 and –3 values. Values for AEGL–1 were not derived because the odor threshold and concentrations causing mild sensory irritation would be above the AEGL–2 levels.

The AEGL–2 values were based on a rat study showing central nervous system depression, diarrhea, and eye and respiratory tract irritation after exposure to 1,000 ppm of ethylene oxide for 4 hrs (Embree et al., 1977); genetic toxicity (dominant lethality) was also seen at this concentration in this same study. An uncertainty factor of 10 was applied for intraspecies variability, because of the steep slope of the dose response relationship from severe irritation and central nervous system depression to the lethality threshold. An uncertainty factor of 3 was applied for interspecies sensitivity, because modes of action are likely to be similar between rodents and humans and systemic uptake of ethylene oxide is similar across species. The time-scaling approach used ten Berge's equation in which $C^n t = k$, and n = 1.2 based on analysis of rat lethality data.

AEGL–3 values were derived from lethality data in the rat. An LC^{01} value (628 ppm), which is considered an approximation of the lethality threshold, was estimated from data in a 4-hr acute inhalation study with rats reported by Jacobson et al. (1956). An uncertainty factor of 10 for intraspecies sensitivity was applied to the LC_{01} estimated value and this was followed by scaling to the different AEGL exposure periods based on ten Berge's equation ($C^n t = k$, where n = 1.2 was used based on reported lethality data for 1- and 4-hr exposures). An interspecies uncertainty factor of 3 was applied because systemic uptake, distribution, and modes of action are likely to be similar between rodents and humans. There are differences in metabolism kinetics, but they are unlikely to affect responses to high acute exposures. Assessment of carcinogenicity data (lung adenomas/carcinomas in female mouse) (NTP, 1987) showed that extrapolating the total cumulative exposure over a 2-year period to single exposures and estimating a 10^{-4} risk resulted in AEGL–3 values of 2,764, 1,382, 346, and 173 ppm for 0.5-, 1-, 4-, and 8-hr exposures. These values exceed those derived from lethality data.

AEGL values derived for ethylene oxide are summarized below:

SUMMARY OF PROPOSED AEGL VALUES FOR ETHYLENE OXIDE

Classification	Exposure Periods				Endpoint (Reference)
	30-minute	1-hour	4-hour	8-hour	
AEGL–1	No values derived	No values derived	No values derived	No values derived	
AEGL–2	190 ppm (342 mg/m³)	110 ppm (198 mg/m³)	33 ppm (59 mg/m³)	19 ppm (34 mg/m³)	Central nervous system effects Embree et al., 1977
AEGL–3	360 ppm (648 mg/m³)	200 ppm (360 mg/m³)	63 ppm (113 mg/m³)	35 ppm (63 mg/m³)	Lethality threshold Jacobson et al., 1956

References

1. Embree, J.W., Lyon, J.P., and Hine, C.H. 1977. The mutagenic potential of ethylene oxide using the dominant-lethal assay in rats. *Toxicology and Applied Pharmacology* 40:261–267.

2. Jacobson, K.H., Hackley, E.B., and Feinsliver, L. 1956. The toxicity of inhaled ethylene oxide and propylene oxide vapors. *Archive for Industrial Health* 13:237–244.

Fluorine

Fluorine is a reactive, highly irritant gas used in the nuclear energy industry, as an oxidizer of liquid rocket fuels, and in the manufacture of various fluorides and fluorocarbons. Fluorine is a severe irritant to the eyes, mucous membranes, lungs, and skin; the eyes and the respiratory tract are the target organ/tissues of an acute exposure. Data on irritant effects in humans and lethal and sublethal effects in five species of mammals (dog, rat, mouse, guinea pig, and rabbit) were available for development of AEGLs (Keplinger and Suissa, 1968). Regression analyses of the concentration-exposure durations (for the fixed endpoint of mortality) for all of the animal species reported determined that the relationship between concentration and time is $C^n \times t = k$, where n = approximately 2 (actual value for n for the most sensitive species, the mouse = 1.77). The data were considered adequate for derivation of the three AEGL classifications for four time periods.

The AEGL–1 was based on the observation that human volunteers could tolerate exposure to 10 ppm for 15 mins without irritant effects (Keplinger and Suissa, 1968). An uncertainty factor of 3 was applied to this NOAEL value to protect sensitive individuals, since fluorine reacts corrosively with the tissues of the respiratory tract and effects are not likely to differ greatly among individuals, including sensitive individuals. The value was then scaled to the 30-min and 1-, 4-, and 8-hr exposure durations using the $C^{1.77} \times t = k$ concentration-exposure duration relationship. It was the consensus of the NAC/AEGL Committee that at mildly irritating concentrations there is a tolerance to irritating gases. Therefore, the calculated 30-min and 1-hr values of 2.3 and 1.5 ppm, respectively, were rounded to 2 ppm and the calculated 4- and 8-hr values of 0.7 and 0.5 ppm, respectively, were rounded to 1 ppm.

The AEGL–2 was based on an animal study in which mild lung congestion was observed in mice at 67 ppm for 30 mins and 30 ppm for 60 mins (Keplinger and Suissa, 1968). Although concentrations causing irritant effects for each species for the same time periods suggested similar species sensitivity, the mouse data, because of slightly lower values, were chosen as the basis for developing the AEGL–2 and AEGL–3. Because the action of irritant and corrosive gases is directly on the tissues, with no pharmacokinetic component involved in the toxicity, there is likely to be little difference among species in response to fluorine exposure. Because similar sensitivity was observed among all species in the key study, no uncertainty factor for interspecies variability was applied. The values were divided by an intraspecies uncertainty factor of 3 to protect sensitive individuals, since effects are not likely to differ greatly among individuals. The values also were adjusted by a modifying factor of 2, based on a limited data base. AEGL–2 values for the other exposure periods were scaled based on the $C^{1.77} \times t = k$ relationship.

The AEGL–3 values were derived from exposure concentrations equal to one half of the LC_{50} values reported (Keplinger and Suissa, 1968). The experimental ½ LC_{50} concentrations tested resulted in no deaths in any species for up to 45 days post exposure, but did produce severe lung congestion in the mouse (Keplinger and Suissa, 1968). For the mouse, the 60-min value was 75 ppm. Because of the similar species sensitivity in the key study, no uncertainty factor for interspecies variability was applied. The values were divided by an uncertainty factor of 3 to protect sensitive individuals and by a modifying factor of 2, based on a limited data base. AEGL–3 values for the other exposure times were calculated based on the $C^{1.77} \times t = k$ relationship.

The calculated values are listed in the table below.

SUMMARY OF PROPOSED AEGL VALUES FOR FLUORINE[a]

Classification	30-minute	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL–1	2ppm (3.1 mg/m³)	2 ppm (3.1 mg/m³)	1 ppm (1.6 mg/m³)	1 ppm (1.6 mg/m³)	No irritant effect-humans (Keplinger and Suissa, 1968)
AEGL–2[b]	11 ppm (17 mg/m³).	5.0 ppm (7.8 mg/m³).	2.3 ppm (3.6 mg/m³).	1.5 ppm (2.3 mg/m³).	Mild lung congestion—mice (Keplinger and Suissa, 1968)
AEGL–3	19 ppm (29 mg/m³).	13 ppm (20 mg/m³).	5.7 ppm (8.8 mg/m³).	3.9 ppm (6.0 mg/m³).	Severe lung congestion—mice (Keplinger and Suissa, 1968)

[a] AEGL–1 values were rounded off because of tolerance to low concentrations of irritant gases. AEGL–2 and AEGL–3 values were rounded to two significant figures.

[b] 30-min and 1-hr AEGL–2 values are based on separate data points.

References

1. Keplinger, M.L. and L.W. Suissa. 1968. Toxicity of fluorine short-term inhalation. *American Industrial Hygiene Association Journal 29:10–18.*

Hydrazine

Hydrazine is a highly reactive reducing agent used in various chemical manufacturing processes. Hydrazine is used by the military as a missile and rocket propellant, and in power sources.

Human data on the toxicity of hydrazine following acute inhalation exposure are limited to anecdotal accounts that lack definitive exposure data. The utility of this information is compromised by concurrent exposure to other chemicals and involvement of simultaneous multiple exposure routes.

Studies have shown that the toxicity of methylated derivatives of hydrazine is qualitatively similar to that of hydrazine except in dogs wherein methylhydrazine has been observed to cause intravascular hemolysis. Based upon limited acute toxicity data, methylhydrazine and symmetrical dimethylhydrazine appear to be somewhat more toxic in rats and mice than is hydrazine while asymmetrical hydrazine appears to be slightly less toxic.

Data from animal studies indicate that hydrazine may be metabolized to acetylhydrazine, diacetylhydrazine, ammonia, and urea, and may form hydrazones with pyruvate and 2-oxoglutarate. The biotransformation of hydrazine is mediated, at least in part, by hepatic monooxygenases. The role of metabolism and absorption/excretion kinetics is uncertain regarding immediate port-of-entry toxic effects from acute inhalation exposures. The highly reactive nature of hydrazine per se is a plausible determinant of acute port-of-entry toxic effects.

AEGLs were based upon data sets defining toxicity endpoints that were specific for the AEGL level. Values for the specific exposure durations were derived based upon exponential scaling ($C^n \times t = k$, where n = 2) from the experimental exposure period. This method was more appropriate for concentration-dependent effects than linear (Haber's Law) scaling. The concentration exposure time relationship for many irritant and systemically acting vapors and gases may be described by $c^n \times t = k$, where the exponent, n, ranges from 1 to 3.5 (ten Berge et al 1986). Because no exposure versus time data were available, the mid-point value of 2 was used as the exponent n for scaling the AEGL values for hydrazine across time.

AEGL–1 values were based upon a study by House (1964) in which male monkeys exhibited skin flushing and eye irritation after a 24-hr continuous exposure to 0.4 ppm hydrazine. A total uncertainty factor of 10 was applied to derive the AEGL–1 values:[1] An uncertainty factor of 3 was applied for interspecies variability because the contact irritation response to the highly reactive hydrazine is not likely to vary greatly among species, and because a nonhuman primate was the test species. An uncertainty factor of 3 was applied for intraspecies variability because the contact irritation from the highly reactive hydrazine is not expected to vary greatly among individuals. The 24-hr experimental value was scaled to 8 hrs using $C^n \times t = k$, where n = 2 as described above. Because hydrazine is extremely reactive and the effects are considered to be concentration dependent rather than time dependent, the 0.1 ppm AEGL–1 value derived for the 8-hr duration was also applied to the 30-min, 1-hr, and 4-hr durations.

The AEGL–2 was derived based upon data from a study by Latendresse et al. (1995) in which rats exposed to hydrazine (750 ppm) for 1 hr exhibited nasal lesions. Following a dosimetric adjustment based upon regional gas dose (U.S. EPA 1994), the values were scaled to AEGL-specific durations as for AEGL–1 and a total uncertainty factor of 30 applied. An uncertainty factor of 10 for interspecies variability was applied to account for a deficiency in data pertaining to species variability and also variability in the data that are available. An uncertainty factor of 3 was applied for intraspecies variability because the toxic response to hydrazine is not likely to vary considerably among individuals of the same species, including susceptible individuals.

The AEGL–3 values were derived based upon a rat inhalation study (HRC, 1993) that provided data to estimate a lethality threshold (LC^{01} = 337 ppm). Temporal scaling was again applied using the exponential expression $C^2 \times t = k$. Dosimetric conversion using a regional gas dose methodology (U.S. EPA 1994) was applied and resulting exposure values adjusted by a total uncertainty factor of 30. An uncertainty factor of 10 for interspecies variability was applied to account for a deficiency in data pertaining to species variability and also variability in the data that are available. An uncertainty factor of 3 was applied for intraspecies variability because the toxic response to hydrazine is not likely to vary considerably among individuals of the same species.

An estimation of AEGLs based upon carcinogenic potential resulting from a one-time, short term exposure was conducted using the inhalation cancer slope factor for hydrazine. The assessment revealed that AEGLs derived from noncarcinogenic toxicity endpoints were lower values and so the AEGL–3 values were based on the noncarcinogenic endpoint.

The proposed AEGLs, their respective toxicity endpoints and references are summarized below.

SUMMARY OF PROPOSED AEGL VALUES FOR HYDRAZINE

Classification	30-minute	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL–1	0.1 ppm (0.1 mg/m³)	0.1 ppm (0.1 mg/m³)	0.1 ppm (0.1 mg/m³)	0.1 ppm (0.1 mg/m³)	Eye and facial irritation inmonkeys (House, 1964)[a]
AEGL–2	8 ppm (10 mg/m³) ..	6 ppm (8 mg/m³)	3 ppm (4 mg/m³)	2 ppm (3 mg/m³)	Nasal lesions (Latendresse et al., 1995)
AEGL–3	47 ppm (61 mg/m³)	33 ppm (43 mg/m³)	17 ppm (22 mg/m³)	12 ppm (16 mg/m³)	Lethality in rats (HRC, 1993)

[a] Because the contact irritation response to the extremely reactive hydrazine is concentration dependent rather than time-dependent, the AEGL–1 is the same of all time periods.

[1] Each uncertainty factor of 3 is actually the geometric mean of 10 which is 3.16, hence 3.16 x 3.16 = 10.

References

1. House, W.B. 1964. Tolerance criteria for continuous exposure inhalation exposure to toxic materials. Part III. Effects on animals of 90-day exposure to hydrazine, unsymmetrical dimethylhydrazine (UMDH), decaborane, and nitrogen dioxide. ASD–TR–61–519 (iii). Wright-Patterson AFB, OH. 84 pp.

2. HRC (Huntington Research Centre, Ltd.). 1993. Hydrazine 64% aqueous solution: acute inhalation toxicity in rats 1-hr exposure. Huntington Research Centre, Cambridge, England. CMA 8/930523.

3. Latendresse, J.R., Marit, G.B., Vernot, E.H., Haun, C.C., and Flemming, C.D. 1995. Oncogenic potential of hydrazine in the nose of rats and hamsters after 1 or 10 1-hr exposures. *Fundamental and Applied Toxicology* 27:33–48.

4. ten Berge, W.F., Zwart. A, and Appelman, L.M. 1986. Concentration-time mortality response relationship of irritant and systemically acting vapours and gases. *Journal of Hazardous Materials* 13:301–309.

5. U.S. EPA 1994. EPA/600/8–90/066F, Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry.

Methylhydrazine

Methylhydrazine is a clear, colorless liquid used extensively in military applications as a missile and rocket propellant, in chemical power sources, and as a solvent and chemical intermediate. Upon contact with strong oxidizers (e.g., hydrogen peroxide, nitrogen tetroxide, chlorine, and fluorine) spontaneous ignition may occur.

Human volunteers exposed to 90 ppm methylhydrazine for 10 mins reported minor irritation as the only effect of exposure (MacEwen et al., 1970).

Toxicity data are available for multiple laboratory species including, rhesus monkeys, squirrel monkeys, beagle dogs, rats, mice, and hamsters. Nonlethal toxic effects include irritation of the respiratory tract, hemolytic responses, and some evidence of renal and hepatic toxicity. Lethal exposures are usually preceded by convulsions. Lethal toxicity varies somewhat among species. One-hour LC_{50} values of 162, 82, 96, 244, 122, and 991 ppm have been determined for rhesus monkeys, squirrel monkeys, beagle dogs, rats, mice, and hamsters, respectively. Concentration-time relationships appear to follow Haber's Law although there appears to be a critical threshold for lethality with little margin between exposures causing only minor, reversible effects, and those resulting in lethality.

In a 1-year inhalation bioassay using dogs, rats, mice, and hamsters, methylhydrazine concentrations of 2 ppm and 5 ppm, there was no evidence of treatment-related carcinogenicity in dogs or rats even after a 1-year post exposure observation period. However, mice exposed to 2 ppm for the same duration exhibited an increased incidence of lung tumors, nasal adenomas, nasal polyps, nasal osteomas, hemangioma, and liver adenomas and carcinomas. In hamsters exposed to 2 or 5 ppm, there was an increase in nasal polyps and nasal adenomas (5 ppm only), interstitial fibrosis of the kidney, and benign adrenal adenomas.

It was the consensus of the NAC/AEGL Committee that the setting of AEGL–1 values for methylhydrazine would be inappropriate. This conclusion was based on the occurrence of toxic effects at or below the odor threshold, and a concentration-response relationship for methylhydrazine that indicated little margin between exposures producing no toxic response and those resulting in significant toxicity.

The AEGL–2 values were derived by applying a modifying factor of 3 to each of the AEGL–3 values. This estimate of a threshold for irreversible effects was justified because of the absence of exposure-response data related to irreversible or other serious, long-lasting effects and the steep dose-response relationship indicated by the data that was available on methylhydrazine. For AEGL–3, lethality data (1-hr LC_{50} of 82 ppm) for squirrel monkeys (Haun et al., 1970) was adjusted using a modifying factor of 3 to estimate a lethality threshold (27 ppm). The lethality data for the species tested indicated a linear relationship between concentration and time. Therefore, temporal scaling to obtain time-specific AEGL values was described as $C^1 \times t = k$ where the exponent n = 1. The derived exposure values were adjusted by a total uncertainty factor of 10. An uncertainty factor of 3 was applied for interspecies variability because a sensitive nonhuman primate was used to estimate the lethality threshold, and an uncertainty factor of 3 was used for intraspecies variability due to the steep exposure-response relationship.[2]

The AEGL values reflect the steep exposure-response relationship exhibited by the toxicity data. Additional information regarding the mechanism(s) of action and metabolism of methylhydrazine may provide insight into understanding and defining the threshold between nonlethal and lethal exposures.

An estimation of AEGLs based upon carcinogenic potential resulting from a one-time, short-term exposure was conducted and the assessment revealed that AEGLs derived from carcinogenic toxicity for a 10^{-4} carcinogenic risk exceeded AEGL–3 values based on non cancer endpoints.

SUMMARY OF PROPOSED AEGL VALUES FOR METHYLHYDRAZINE

Classification	30-minute	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL–1	NA	NA	NA	NA	Inappropriate because notable toxicity may occur at concentrations below the odor threshold; concentration-response relationships suggest little margin between exposures causing minor effects and those resulting in serious toxicity.[a]
AEGL–2	2 ppm (3.8 mg/m^3)	1 ppm (1.9 mg/m^3)	0.2 ppm (0.4 mg/m^3)	0.1 ppm (0.2 mg/m^3)	Three-fold reduction in AEGL–3.
AEGL–3	6 ppm (11.3 mg/m^3)	3 ppm (5.6 mg/m^3)	0.7 ppm (1.1 mg/m^3)	0.3 ppm (0.6 mg/m^3)	1-hr LC_{50} of 82 ppm reduced 3-fold to estimate a lethality threshold; UF–10

[a] Refer to AEGL–1 for hydrazine if hydrazine is also present.

[2]Each uncertainty factor of 3 is the geometric mean of 10 which is 3.16; hence, 3.16. x 3.16 = 10.

References

1. Haun, C.C., MacEwen, J.D., Vernot, E.H., and Egan, G.F. 1970. Acute inhalation toxicity of monomethylhydrazine vapor. *American Industrial Hygiene Association Journal* 31:667–677.

2. MacEwen, J.D., Theodore, J., and Vernot, E.H. 1970. Human exposure to EEL concentrations of monomethylhydrazine. Proceedings. First Annual Conference on Environmental Toxicology. AMRL–TR–70–102, Aerospace Medical Research Laboratory, Wright-Patterson Air Force Base, OH.

Nitric Acid

Nitric acid is a highly corrosive, strongly oxidizing acid. The course of toxicity following inhalation exposure to nitric acid is consistent between humans and animals. Nitric acid fumes may cause immediate irritation of the respiratory tract, pain, and dyspnea which are followed by a period of recovery that may last several weeks. After this time, a relapse may occur with death caused by bronchopneumonia and/or pulmonary fibrosis. For exposure to nonlethal concentrations, allergic or asthmatic individuals appear to be a sensitive subpopulation.

For derivation of the AEGL values, both human and animal data were utilized. For AEGL–1, humans exposed to 1.6 ppm (4.13 mg/m^3) for 10 mins showed no changes in pulmonary function (Sackner and Ford, 1981). An uncertainty factor of 3 was applied to account for sensitive populations, since the mechanism of action of an irritant gas is not expected to vary greatly among individuals. Scaling to the 30-min, 1-, 4-, and 8-hr exposure periods was not performed because this was a no effect level and irritation is generally concentration dependent but not time dependent. The derived AEGL–1 value is above the odor threshold which provides a warning of exposure before an individual would experience notable discomfort.

AEGL–2 values were derived from data on human studies (Diem, 1907). Individuals exposed to 12 ppm (31 mg/m^3) nitric acid for 1 hour experienced respiratory irritation, pressure in the chest, slight stabbing pains in the trachea and larynx, coughing, marked secretion from the nose and salivary glands, burning of the eyes and lacrimation, and burning and itching of facial skin. An uncertainty factor of 3 was applied to the 1-hr exposure level reported in this study and scaling of the value to 30 mins, 4 hrs, and 8 hrs was accomplished as described below.

Very little data were available for determining AEGL–3 levels. Human case reports of severe injury or death did not contain exposure concentrations and in most animal studies, nitric acid was administered by intratracheal instillation. Extrapolation from a mortality versus concentration curve in the published literature indicated that the LC_0 was approximately one-third the LC_{50} value of 138 ppm (356 mg/m^3) for the rat. This concentration was reported as nitrogen dioxide (NO_2) instead of total nitric acid. From the estimated LC_0 an uncertainty factor of 3 was applied to account for sensitive individuals. Due to the steepness of the dose-response curve for nitric acid, application of additional uncertainty factors would lower the AEGL–3 values below the values derived for AEGL–2 which were based on human data and, since the mechanism of action appears to be the same in both humans and animals with the production of both pulmonary edema and bronchiolitis obliterans, additional uncertainty factors were not used.

The concentration-exposure time relationship is described by the equation $c^n t = k$. Although insufficient data on nitric acid were available to calculate the exponent n, structure-activity relationships indicated that nitric acid and NO_2 have parallel dose-response curves for a 30-min exposure. Therefore, for extrapolation to the various time points for the AEGL–2 and –3 levels, a previously published n of 3.5 derived from NO_2 data was used.

The calculated values for the three AEGL classifications for the four time periods are listed in the table below.

SUMMARY TABLE OF PROPOSED AEGL VALUES FOR NITRIC ACID

Classification	30-minute	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL–1	0.5 ppm (1.3mg/m^3).	0.5 ppm (1.3mg/m^3).	0.5 ppm (1.3mg/m^3).	0.5 ppm (1.3mg/m^3).	No observed effect level (NOEL) for changes in pulmonary function in humans (Sackner and Ford, 1981); UF=3
AEGL–2	5 ppm (13mg/m^3)	4 ppm (10mg/m^3)	3 ppm (8mg/m^3)	2 ppm (5mg/m^3)	Irritation with cough; burning of eyes and skin; lacrimationand salivation (Diem, 1907); UF=3
AEGL–3	15 ppm (39mg/m^3)	13 ppm (34mg/m^3)	8 ppm (21mg/m^3)	7 ppm (18mg/m^3)	LC_0 estimated from a 30-min LC_{50} in the rat (Gray et al., 1954); UF=3

References

1. Diem, L.1907. [Experimentelle Untersuchungen über die Einatmung von Saltpetersäure-Dämpfen].Thesis, D-8700, Würzburg. (as cited in Henschler, 1991).

2. Gray, E.Le B., Patton, F.M., Goldberg, S.B., and Kaplan, E.1954. Toxicity of the oxides of nitrogen. Part II. Acute inhalation toxicity of nitrogen dioxide, red fuming nitric acid, and white fuming nitric acid. *Archive for Industrial Hygiene and Occupational Medicine* 10:418–422.

3. Henschler, D.1991. Occupational Toxicants Critical Data Evaluation for MAK Values and Classification of Carcinogens, Vol. 3. VCH Publishers, New York (USA) and Weinheim (FRG).

4. Sackner, M.A. and Ford, D. 1981. Effects of breathing nitrate aerosols in high concentrations for 10 mins on pulmonary function of normal and asthmatic adults, and preliminary results in normals exposed to nitric acid fumes. *American Review of Respiratory Diseases* 123:151.

Phosphine

Phosphine is a colorless gas used as a fumigant against insects and rodents in stored grain. The pesticide is usually applied as a metal phosphide and reacts with moisture to liberate phosphine gas. Phosphine is also used in the semiconductor industry. Information concerning human exposure to phosphine is of limited use in derivation of AEGL values since exposure duration and concentration are not precisely reported. Appropriate animal data are more abundant; however, data consistent with the definition of AEGL–1 values are not available. Therefore, due to insufficient data, AEGL–1 values were not derived.

The AEGL–2 was based on a NOEL for renal and pulmonary pathology in Fischer 344 rats exposed to 3.1 ppm phosphine 6 hrs/day, 5 days/week for 13 weeks (Newton et al, 1993). Scaling to the 30-min, 1-, 4-, and 8-hr exposures was accomplished using the $c^n \times t = k$ relationship, where n = 2. The

concentration exposure time relationship for many irritant and systemically acting vapors and gases may be described by $c^n \times t = k$, where the exponent, n, ranges from 1 to 3.5 (ten Berge et al 1986). For scaling the AEGL values for phosphine across time, the mid-point value of 2 was used as the exponent n because no exposure versus time data were available. An uncertainty factor of 3 was used for interspecies extrapolation since the rat is the most sensitive species. An uncertainty factor of 10 was used for intraspecies extrapolation since the data indicate that children are more sensitive than adults when exposed to phosphine.

The AEGL–3 was based on a NOEL for lethality (18 ppm phosphine) in Sprague Dawley rats exposed to phosphine for 6 hrs. Scaling to the 30-min, 1-, 4-, and 8-hr exposures was accomplished using the $c^n \times t = k$ relationship, where n = 2. An uncertainty factor of 3 was used for interspecies extrapolation since the rat is the most sensitive species and an uncertainty factor of 10 was used for intraspecies extrapolation since data indicate that children are more sensitive than adults when exposed to phosphine.

The calculated values are listed in the table below.

SUMMARY TABLE OF PROPOSED AEGL VALUES PHOSPHINE

Classification	30-minute	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL–1 (Nondisabling)	.....	.....	.....	.....	Appropriate data not available
AEGL–2 (Disabling)	0.36 ppm (0.52 mg/m^3).	0.25 ppm (0.35 mg/m^3).	0.13 ppm (0.18mg/m^3).	0.09 ppm (0.13 mg/m^3).	NOEL for renal and pulmonary pathology in rats exposed to 3.1 ppm phosphine, 6 hr/day, 5 days/week for 13 weeks (Newton et al., 1993)
AEGL–3 (Lethality) ..	2.1 ppm (2.9 mg/m^3)	1.5 ppm (2.1 mg/m^3)	0.74 ppm (1.0 mg/m^3).	0.52 ppm (0.73 mg/m^3).	NOEL for lethality in rats exposed to 18 ppm phosphine for 6 hr.(Newton, 1991)

References

1. Newton, P.E. 1991. Acute Inhalation exposures of rats to phosphine. Biology Dynamics, Inc. East Millstone, NJ. Project No. 90–8271.

2. Newton, P.E., Schroeder, R.E., Sullivan, J.B., Busey, W.M., and Banas, D.A. 1993. Inhalation toxicity of phosphine in the rat: acute, subchronic, and developmental. *Inhalation Toxicology* 5:223–239.

V. Public Record and Electronic Submission

The official record for this notice, as well as the public version, has been established for this notice under docket control number (OPPTS–00218; FRL–5737–3) (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (OPPTS–00218; FRL–5737–3). Electronic comments on this notice may be filed online at many Federal Depository Libraries.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

List of Subjects

Environmental protection, Hazardous substances.

Dated: October 20, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–28642 Filed 10–29–97; 8:45 am]
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Thursday,
October 30, 1997

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 135
Air Tour Operators in the State of Hawaii; Interim Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 27919; Special Federal Aviation Regulation (SFAR) No. 71–1]

RIN 2120–AG44

Air Tour Operators in the State of Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim rule; disposition of comments; and request for comments on a draft Environmental Assessment.

SUMMARY: On September 26, 1994, the FAA issued an emergency final rule as SFAR 71, which established certain procedural, operational, and equipment requirements for air tour operators in the State of Hawaii. The final rule was effective October 26, 1994; the FAA invited public comments on the rule until December 27, 1994. This document responds to public comments and extends the expiration date for SFAR 71 until October 26, 2000. This action will ensure that regulatory requirements for the safe operation of air tours in the airspace over the State of Hawaii remain in effect.

DATES: Comments must be received on or before December 29, 1997. This interim rule is effective October 26, 1997.

ADDRESSES: Comments on this interim rule should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27919, 800 Independence Ave., SW, Washington, DC 20591. Comments may also be sent electronically to the Rules Docket by using the following Internet address: 9–NPRM–CMTS@mail.faa.dot.gov. Comments must be marked as Docket No. 27919. Comments may be examined in Room 915G on weekdays between 9:00 a.m. and 5:00 p.m., except on federal holidays.

FOR FURTHER INFORMATION CONTACT: For a copy of this rule, contact the Office of Rulemaking at (202) 267–9677. For technical questions, contact David Metzbower, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; Telephone (202) 267–3724.

SUPPLEMENTARY INFORMATION:

Availability of Interim Rule

Any person may obtain a copy of this interim rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9677. Requests should be identified by the docket number of this proposal.

An electronic copy of this interim rule may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (703–321–3339), or the Federal Register's electronic bulletin board service (telephone 202–512–1661). Internet users may reach the FAA's web page at http://www.faa.gov, or the Federal Register's page at http://www.access.gpo.gov/su_docs, for access to recently published rulemaking documents.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

The FAA's definitions of small entities may be accessed through the FAA's web page (http://www/faa.gov/avr/arm/sbrefa.htm), by contacting a local FAA official, or by contacting the FAA's Small Entity Contact listed below.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.dot.gov

Background

The Air Tour Industry

Since 1980, the air tour industry in the State of Hawaii has grown rapidly, particularly on the islands of Oahu, Kauai, Maui, and Hawaii. The growth of the tourist industry, the beauty of the islands, and the inaccessibility of some areas of the islands has generated tremendous growth in the number of air tour flights. In 1982, there were approximately 63,000 helicopter and 11,000 airplane tour flights. By 1991, these numbers had increased to approximately 101,000 for helicopters and 18,000 for airplanes. Currently in Hawaii, the air tour industry carries about 500,000 passengers annually. The Honolulu Flight Standards District Office reports that currently twenty-six operators conduct air tours under Part 135, using 77 aircraft of which 18 are airplanes and 59 are helicopters. Approximately 9 operators conduct air tours under Part 91 using approximately 16 aircraft, of which 9 are airplanes and 7 are helicopters.

History and Escalation of Accidents

The growth of the air tour sightseeing industry in Hawaii has been associated with an escalation of accidents. During the 9-year period between 1982 and 1991, there were 11 air tour accidents with 24 fatalities. The accident data shows an escalation of accidents in the 3-year period between 1991 and 1994, during which time there were 20 air tour accidents with 24 fatalities. The apparent causes of the accidents ranged from engine power loss to encounters with adverse weather. Contributing factors to the causes and seriousness of accidents were: operation beyond the demonstrated performance envelope of the aircraft, inadequate preflight planning for weather and routes, lack of survival equipment, and flying at low altitudes (which does not allow time for recovery or forced landing preparation in the event of a power failure). Despite voluntary measures taken by some Hawaii air tour operators and an increase in FAA's inspections, the escalation of accidents occurred, indicating a need for additional measures to ensure safe air tour operations in Hawaii.

On September 26, 1994, the FAA published an emergency final rule as Special Federal Aviation Regulation (SFAR) No. 71 (59 FR 49138). This action was taken because of the increase in the number of fatal accidents involving air tour aircraft during the period 1991–1994 and the causes of those accidents. The emergency regulatory action established additional operating procedures, including minimum safe altitudes (and associated increases in visual flight rules (VFR) weather minimums), minimum equipment requirements, and operational limitations for air tour aircraft in the state of Hawaii.

The comment period for the emergency rule closed on December 27, 1994.

Discussion of Comments

General

The FAA received more than 200 comments on the SFAR. Commenters included the National Transportation Safety Board (NTSB), state and local governments, air tour operators, helicopters associations, tourism-related organizations, citizen and environmental groups, and individuals. The most controversial provision of the SFAR was the minimum altitude requirement.

The following discussion contains a summary of comments according to the specific subject areas defined in the SFAR. It should be noted that comments which were not relevant to these subject areas or were considered to be speculative are not included in this discussion.

Because of the time that has expired since the publication of SFAR 71, some of these comments may not have the same relevance because of subsequent events. In addition, air tour operators and the FAA have worked together to mitigate concerns that the rule is overly burdensome. The FAA's response to these comments is summarized at the end of the comment discussion.

Safety Record

Several commenters, including the Hawaii Helicopter Operators Association (HHOA) and the Helicopter Association International (HAI), state that Hawaii's air tour operators have a good safety record that exceeds that of helicopter operations in other parts of the United States, and a safety record that exceeds the national average of general aviation aircraft. Other commenters say that the accident rate is low considering the number of flight hours and the number of passengers flown. HHOA and others state that recent accidents were caused by pilot error and mechanical failure, and not the altitude at which the aircraft were operated.

Two comments were received from persons who were personally involved in air tour accidents in Hawaii. In addition to asking that all of the safety tools, such as flotation devices for aircraft and passengers, be used, they also comment on the lack of rescue support, which cost several lives in one accident. One of these individuals suggests that the SFAR should apply everywhere, commenting that "Water, helicopters, floats, and life jackets do not perform differently from one state to another."

Need for Emergency Rulemaking

Several commenters state that there is little supporting data to justify the FAA's issuance of the SFAR under emergency rulemaking provisions.

In a petition to the FAA to withdraw or stay the SFAR (which was also submitted as a comment), HHOA states that, because there was no true emergency, the FAA should not have used the "good cause" exception of the Administrative Procedures Act (APA) to avoid rule issuance without notice and public comment. Some commenters believe that the real reason for SFAR 71 is noise, not safety.

Applicability and Definitions

Some commenters, including HHOA, contend that states such as Alaska, California, and Oregon have rugged coastlines and terrain that pose the same hazards to air tours as Hawaii's terrain. These commenters posit that the SFAR, which is being imposed only on Hawaii, is discriminatory and puts the air tour industry in Hawaii at a competitive disadvantage.

Flotation Devices

HHOA states that limiting the flotation requirement to helicopters is arbitrary and capricious because the SFAR assumes that only helicopters sink rapidly after forced landings on water.

Other commenters favor requiring both flotation equipment and the wearing of personal flotation gear. The NTSB; the Department of Transportation Airports Division for the State of Hawaii; and the Sierra Club Legal Defense Fund point out that because helicopters sink more quickly in water, the use of external flotation equipment would provide the necessary time for passengers to exit the helicopter.

The NTSB states that at its public hearing on air tour safety, air tour operators and helicopter manufacturers expressed concern about the capabilities of airframe-mounted helicopter flotation systems. They point out that a helicopter's emergency water entry may easily exceed the certificated vertical speed values of current systems and result in failure of this equipment to perform as expected. In its comment, the NTSB recommends that SFAR No. 71 be modified to provide for two redundant means of occupant survival: airframe-mounted flotation equipment and the wearing of a life preserver by each person while on board.

Helicopter Performance Plan

One operator contends that this requirement is not necessary because § 91.9 requires compliance with the operating limitations specified in the approved rotorcraft flight manual (RFM). Also, § 135.345(b)(2) requires aircraft performance characteristics to be part of an operator's required training program.

HHOA states that this requirement would, in effect, result in a one-state certification program because the information requested in the operators' certification performance plans would not be required elsewhere in the United States.

Helicopter Operating Limitations

HAI states that the operating limitations could adversely affect operations that are routinely performed in or near the curve, such as external load lifting, and that operating within the height-velocity curve should be left to the discretion of the operator.

Several commenters, including HHOA, contend that this requirement already exists in 14 CFR section 91.9, which states that the shaded areas or dead-man's curve area is to be avoided except under specific circumstances.

The NTSB states that comments from operators and manufacturers at its public hearing on air tour safety question whether helicopter operating limitations should be placed solely on air tour operators in Hawaii, while non-tour operations in Hawaii and operators in other states remain unregulated in this area. The NTSB recommends that the FAA conduct discussions with interested parties to resolve the issue of helicopter height-velocity diagram performance.

Standoff Distance

HHOA states that under the 1,500 foot lateral clearance (standoff) requirement, pilots would be forced to fly farther offshore than now permitted, increasing the power-off glide distance to shore in the event of an engine failure. HHOA adds that this requirement will cause two-way air traffic congestion in and over scenic canyons by forcing pilots to follow the midline of the canyon, thereby further decreasing the pilot's ability to keep a close visual surface reference sufficient to safely control the helicopter.

Minimum Flight Altitudes

A number of commenters point out that the 1,500 foot above ground level (AGL) requirement does not take into account cloud cover and weather conditions in Hawaii. Commenters say that the requirement will increase the probability of flying into bad weather, and prevent helicopters from flying below the clouds where they can maintain visual reference to the ground.

The NTSB believes that the requirement may lead to increased operating time over water, difficulties in regulatory enforcement, and possible disregard of the FAA regulation.

Some commenters state that the SFAR's minimum altitude and standoff requirements should not apply to fixed-wing aircraft. One operator says that accidents cited in the SFAR were due to pilot error and disregard for existing regulations which already prevent fixed-wing VFR flights into IMC conditions. HHOA adds that requiring helicopters to fly at 1,500 feet forces pilots to operate helicopters as fixed-wing aircraft which is contrary to the certification requirements of helicopters.

Many commenters, including the NTSB, HHOA, ALPA, and the Chamber of Commerce of Hawaii, state that the minimum altitude requirement will cause air tour traffic to be concentrated at the same altitude, increasing the likelihood of midair collisions.

Several commenters, including HHOA, state that the minimum altitude requirement will create additional hazards for emergency landings. At low altitudes, pilots are better able to spot a suitable landing site; at higher altitudes it takes longer to land and shut off the engine, thereby increasing the risk of a fire and further mechanical failure. One operator states that the minimum altitude requirement is not needed because § 91.119 says that no person may operate an aircraft below an altitude that does not allow for an emergency landing without undue hazard to persons or property on the surface.

Visibility and Cloud Clearance

Several commenters point out that the minimum altitude requirements in the SFAR do not take into account changing cloud cover and weather conditions in Hawaii which affect pilots' visibility and ability to maintain required distances from clouds. NTSB notes that the 1,500 foot altitude may cause encounters with cloud layers not found at lower altitudes. Some commenters say that pilots would best avoid unforeseen weather conditions and maintain sufficient visibility by flying below the clouds and maintaining visual reference to the ground.

Briefing Passengers

Commenters on this issue express support for the requirement. HAI states that although passenger briefing is already standard practice for most operators, the requirement will ensure that passenger briefing takes place.

Costs

Many commenters state that the SFAR will devastate Hawaii's helicopter tourist industry and related businesses, many of which are small businesses. Commenters say that over 650,000 visitors take helicopter tours annually, and that the helicopter tour industry contributes $100 million per year to Hawaii's economy. Several tourism organizations say that since the SFAR took effect, bookings dropped 40 to 50 percent which is equivalent to an annual revenue loss of $35 million. Some of these commenters add that the SFAR will impact 1,000–2,000 people employed by the helicopter tour industry and related businesses. A pilot commented that the air tour industry raises $100 million annually, and noted that this represents a considerable tax contribution to the State of Hawaii. Commenters on this issue included hotel associations, a trade association, a visitors' bureau, a publishing company, and a resort association. A number of form letters were received expressing that Hawaii has an unemployment problem and that this rule will be tantamount to taking away jobs. A different form letter stated that the rule is excessive, that most tour operators are "eco-friendly", and that air tour operators perform valuable community assistance in supporting disaster assistance.

Several operators cite revenue losses since the SFAR took effect due to the necessity of grounding flight operations when cloud ceilings were below 1,500 feet AGL. Several commenters, including HAI, contend that the SFAR underestimates the number of no-fly days tour operators experience because of low cloud ceilings.

HAI quotes from the SFAR, which states ". . . although the 1,500 foot minimum altitude requirement has a significant economic impact on a substantial number of small entities, it provides superior operational safety." HAI says that this equates to the notion of "overly burdening" these same small entities.

Monitoring, Enforcement, and Voluntary Efforts

Some commenters, including HAI, point out that better enforcement of existing regulations would help prevent air tour accidents and that Hawaii's FSDO staff should be increased for this purpose. HHOA adds that air safety would be improved if expanded weather operations were provided by more than the one Flight Service Station in Honolulu.

Some commenters state that the helicopter air tour industry is already using voluntary measures to ensure safety and reduce noise. An operator, the Kauai County Council, and the Maui Air Traffic Association say that HHOA's "Fly Neighborly" program, which recommends a 1,500 foot minimum altitude, is a good means to ensure voluntary compliance with existing regulations.

Environmental Impacts

A number of commenters state that the minimum altitude should be 2 miles, not 1,500 feet. These commenters cite the value of the wilderness experience and the protection of wildlife as justification for banning flights over national parks in Hawaii. They urge the FAA to make the SFAR permanent.

One commenter who lives 14 miles from Kahului Airport expresses concern that in an emergency, a helicopter with little altitude would be forced to land near her house and urges enforcement of the 1,500 foot restriction. A major environmental association states that deviations from the rule should only be allowed for reasons of safety.

Other commenters state that the air tour industry is growing so rapidly in Hawaii that private heliports are springing up, allowing even more uncontrolled growth. Therefore, more controls than are provided by SFAR 71 may be needed.

The docket contains comments from several neighborhood associations who comment that the SFAR is forcing tours to be rerouted over their property, that the FAA is not enforcing the 1,500 foot restriction for all operators, that all pilots conducting air tour operations should be required to have Part 135 certificates, and that the FAA should implement a system for tracking violators. One association suggests a $2,000 fine, per violation, per day, for each offender.

FAA's Response

The FAA finds that the issuance of SFAR 71 is justified by the accidents that occurred from 1982–1991. The Court of Appeals for the Ninth Circuit supported the FAA's finding by holding that the FAA had good cause for emergency rulemaking because of the increase in recent fatal accidents (U.S. Court of Appeals for the Ninth Circuit, No. 94–70703, March 29, 1995; *Hawaii Helicopter Operators* v. *Federal Aviation Administration*, 51 F. 3d 212 (9th Cir. 1995). Moreover, the FAA finds that the rule has been successful in accident prevention. Since its issuance, there have been only three incidents—

all engine failures that landed safely with no injuries.

One of the most contentious aspects of the SFAR for operators was the minimum operating altitude. The FAA, after working closely with air tour operators, believes that this problem has been somewhat mitigated. Since 1994, the FAA has allowed deviations from SFAR 71 for the majority of air tour operators. Air tour operators of fixed-wing aircraft have been granted deviations to conduct air tours at a minimum altitude of 1,000 feet; air tour operators of single-engine helicopters have been granted deviations to conduct air tours at a minimum of 500 feet. The use of deviations has provided separation between the fixed-wing aircraft and helicopters around the scenic areas where the traffic is the most dense. The FAA has provided an equivalent level of safety to that of the higher altitude by additional safety measures for those air tour operators. Each air tour operator that is granted a deviation from the higher altitude is evaluated on a case by case basis. Each deviation is site-specific and allows operation only over areas of raw terrain (areas devoid of any persons, vessels, vehicles or structure). The altitude over populated areas and other than raw terrain remains at 1500 feet. The pilots for each respective operator must demonstrate knowledge of the specific sites during FAA flight checks at each specific site. Also during those flight checks, the pilots must demonstrate the ability to successfully autorotate to an alternate emergency landing area at each specific site.

In response to the comments on costs, the FAA believes that that the SFAR has not had a direct impact on the viability of the air tour industry in Hawaii. Because of the willingness of the air tour operators to work with FAA, viable air tours have been created without an adverse impact on safety. It is important to remember that these comments on costs were made immediately following the issuance of the SFAR and before the deviations were in place.

In response to comments suggesting that the purpose of SFAR 71 was to mitigate noise, the FAA reiterates its strong statement made in the emergency final rule that the purpose of that rulemaking was for reasons of safety.

In response to comments on flotation devices and performance flotation gear, the FAA has by operations specifications required each helicopter operator to require passengers to wear personal flotation gear when operating over water whether or not the helicopter is equipped with exterior flotation devices.

The FAA has prepared a draft Environmental Assessment (EA) which addresses the environmental comments previously submitted during the emergency rulemaking and analyzes the environmental impacts of this rule, the extension of SFAR 71.

With the rulemaking, the FAA will extend SFAR 71 for an additional 3 years. During this time the FAA intends to issue a notice of proposed rulemaking which will apply to all air tour operators. This national rule will be responsive to NTSB comments and those operators who commented that the SFAR was discriminatory against operators in Hawaii. The proposed rulemaking will consider some of the same issues that commenters have noted in responding to SFAR 71; in this context, the comments on SFAR 71 have been helpful to the FAA. Since the national air tour rulemaking is not yet ripe, the FAA cannot divulge details of the proposed rule, but does encourage those persons who commented on SFAR 71 to submit comments to the proposed national rule when it is published. The FAA anticipates that the national rule, when finalized, will replace SFAR 71–1, which would then be rescinded.

Environmental Review

Because there were a considerable number of comments on the environmental effects of the emergency final rule issued as SFAR 71, the FAA has prepared a draft Environmental Assessment to assure compliance with the National Environmental Policy Act of 1969 (NEPA) and other applicable environmental laws, regulations and orders.

A copy of the draft EA may be obtained by calling Linda Williams, Office of Rulemaking, FAA, 800 Independence Ave., SW, Washington, DC 20591, at (202) 267–9685. An electronic copy is available at http://www.faa.gov. Comments on the draft EA should be mailed to the address given or sent electronically to 9–NPRM–CMTS@.faa.dot.gov and clearly marked as "Comments to the draft EA for Extension of SFAR 71." The comment period for the draft EA is the same as for the interim rule, on or before December 29, 1997.

Based upon the draft EA and comments received on the draft EA, the FAA will determine whether to issue a final EA and a Finding of No Significant Impact (FONSI) or to prepare an environmental impact statement. If a final EA and FONSI are determined appropriate for the final rule, these documents will be available in Docket No. 27919 and on the Internet at http://www.faa.gov.

Regulatory Evaluation Summary

In accordance with SFAR 71, certain procedural, operational, and equipment requirements were established for air tour operators currently operating in the State of Hawaii. Compliance with SFAR 71 was estimated to increase costs approximately $2.1 million, in current dollars, over the three year period, 1994 to 1997. Most of the increase in costs was associated with lost revenue that resulted from tour cancellations when the new minimum flight altitudes could not be achieved. Based on data identified during the promulgation of SFAR 71, the FAA estimated that the cost associated with revenue loss totaled approximately $1.9 million. Additional costs associated with SFAR 71 included $201,000 to provide lifevests on subject helicopters and $10,000 for the development of a helicopter performance plan. The estimated potential safety benefits associated with SFAR 71 totaled approximately $33.7 million over three years. All these dollar estimates have been updated to current dollars from 1994 dollars. A copy of the Final Regulatory Evaluation, Final Regulatory Flexibility Determination, and Trade Impact Assessment completed for the original SFAR have been placed in the docket.

The FAA has worked with the air tour operators to lessen the burden of lost revenue from canceled tours. This has been accomplished by allowing deviations from SFAR 71 for specific air tour operations evaluated on a case by case basis. When deviations of 1,000 feet for fixed-wing aircraft and 500 feet for single-engine helicopters are granted, the estimated revenue loss may be overstated, because the deviations allow a tour operation to take place that otherwise would have been canceled under the minimum flight altitudes of SFAR 71. Therefore, because of the FAA allowing deviations from SFAR 71 for the majority of air tour operators in Hawaii, much of the estimated $1.9 million revenue loss did not occur. However, due to other safety measures for air tour operators, such as separation between fixed-wing and helicopter operations around scenic areas, deviations from flight altitudes have not compromised safety. Since the issuance of SFAR 71, there have been no fatalities or injuries as a result of the new procedural, operational or equipment requirements. In view of the foregoing, the FAA has determined that the extension to SFAR 71 is cost beneficial.

This regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because it was

issued originally as an emergency final rule. A final regulatory evaluation of the regulation, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under FOR FURTHER INFORMATION CONTACT. The FAA has determined that this action is a significant regulatory action under Executive Order 12866.

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 Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have "significant economic impact on a substantial number of small entities." FAA Order No. 2100.14A outlines the FAA's procedures and criteria for implementing the RFA. The FAA's criteria for "a significant impact" is an annualized cost threshold of at least $4,900.

The FAA's original regulatory flexibility analysis indicated that the SFAR would impose a "Significant economic impact on a substantial number of small entities." (See copy of original Regulatory Flexibility Determination included in the docket for this rulemaking.) The FAA estimated the total annualized cost of the final rule was approximately $712,000, in current dollars. The annualized cost of the 1,500 foot minimum altitude requirement for the air tour industry (fixed-wing and helicopter) was approximately $635,700. After assessing the annualized cost for individual operators on a per seat basis, the FAA determined that the SFAR would impose costs greater than the annualized cost threshold of $4,900 for 31 of 37 of the affected air tour operators, most of whom are small entities. The FAA calculated the annualized cost regarding alternative minimum altitude requirements of 500 feet, 800 feet, and 1,000 feet. Based on this figure, the FAA determined that a minimum altitude requirement of 500 feet would be necessary to lower the annualized cost below the $4,900 threshold for all but four of the air tour operators. However, after analyzing the safety implications of lowering the minimum altitude to 500 feet, the FAA determined that to do so would result in a decline in safety benefits.

Since the issuance of the SFAR, the FAA received requests from several operators to fly at lower altitudes. Air tour operators requested "deviations" from the rule to obviate the economic burden imposed upon them by the SFAR. The FAA worked with the operators to create individual exceptions under which air tours could occur at lower altitudes but with other conditions imposed. The resulting exception, referred to as a deviation, was designed to minimize the potential adverse economic effects on the air tour operators while maintaining the same level of safety as that afforded at 1,500 feet.

A deviation allows an operator to fly at lower altitudes with the imposition of certain additional safety requirements. Operators must individually request a deviation from the FAA. The FAA considers each request on a case by case basis and, after close scrutiny of each air tour operation, determines whether the issuance of a deviation from the SFAR will achieve the desired goals. The imposition of additional safety requirements varies from operator to operator. Requirements can include safety equipment modifications and/or special operation procedures, such as separation between fixed-wing and helicopter operations around scenic areas. Currently, 16 of the 26 air tours operating under part 135, and 2 of the 9 air tours operating under part 91, have sought and have received deviations from the SFAR. Those operators who have not sought a deviation are operating under air traffic control (ATC) positive control and are not, therefore, required to comply with the provisions of the rule, or were already operating at higher altitudes. The practical impact of FAA issued deviations, considered along with ATC positive control, is that the majority of small entities are currently operating at lower altitudes. The FAA anticipates that it will continue to grant deviations as it has up to this point, which will in effect work to mitigate the economic impact of the SFAR on small entities.

The FAA is compelled to stand by the results of its original regulatory flexibility analysis despite the reasonable conclusion that can be drawn from these facts, namely, that those operators who requested deviations did so because they believed it would be less costly than complying with the SFAR. Although the agency believes that costs of compliance are now lower than originally estimated, the agency has no data to show the extent of any change in the economic impact on small businesses as reported in the original regulatory flexibility analysis. Accordingly, the FAA certifies that this extension has a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

When the FAA promulgated SFAR 71, it found that SFAR would not have an adverse impact on the international trade because the affected operators do not compete with foreign operators. The FAA certifies that this SFAR will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services to the United States.

Paperwork Reduction Act

SFAR 71 contains information collection requirements, specifically in Section 6. Minimum flight altitudes and Section 7. Passenger briefing. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted these requirements to OMB. As a result, an emergency clearance of the information collection requirement (No. 2120–0620) has been approved through February 28, 1998.

SFAR 71, which became effective on October 26, 1994, applies to air tour operators in the state of Hawaii. Under the SFAR, both Part 91 and Part 135 operators are required to provide a passenger safety briefing on water ditching procedures, use of required flotation equipment, and emergency egress from the aircraft in event of a water landing. The FAA estimates that 100,000 air tour operations are conducted annually by 35 operators, that each safety briefing takes 3–4 minutes, and that the cost of the briefing is $10.00. Using these numbers, 400,000 minutes = 6,667 hours × $10.00 equals approximately $.70 per flight.

For the deviations collection, two calculations must be done since operators first requested deviations to 1,000 feet, and then to 500 feet. 1,000 ft. deviations were granted to approximately 35 operators, and it is estimated that the preparation took each operator 2 hours at $15.00 an hour for a total of approximately $1,050.00. The cost for the government to review the deviations is estimated to be 1 hour of review and operations preparation using 35 hours of inspector time or approximately $1,750.00 in costs. The deviation requests to 500 feet cost the operators 35 × 1 hour at $15.00 per hour or $525.00. Cost of an inspector's review is estimated at 35 × ½ hour or $875.00. In addition, it is necessary to include the costs for FAA inspectors checking pilots on specific sites for the 500 feet deviation, and the cost for operators' check pilots to check line pilots. The former is estimated to be 35 × 3 hours at an operator/aircraft cost of $250.00 or $26,250.00. The cost to check line pilots

is estimated to be 100 × 1 hour × $250.00 or $25,000.00. The cost to the government (inspectors' time) for all deviations is estimated to be 35 × 3 hours × $50.00 or $5,250.00.

Organizations and individuals desiring to submit comments on the information collection requirements of SFAR 71 should send them to the FAA's Rules Docket, the address for which is given in the **ADDRESSES** section of this interim rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The FAA has determined that this rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. However, because expenditures by the private sector will not exceed $100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The regulations herein will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA certifies that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Aviation safety.

14 CFR Part 135

Air taxi, Aircraft, Airmen, Aviation safety.

The Amendment

The Federal Aviation Administration amends 14 CFR parts 91 and 135 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

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.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

2. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(G), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44713, 44715–44717, 44722.

3. In SFAR NO. 71—Special Operating Rules For Air Tour Operators In The State Of Hawaii, section 8 is revised to read as follows:

SFAR NO. 71–1—Special Operating Rules for Air Tour Operators in the State of Hawaii

* * * * *

Section 8. Termination date. This Special Federal Aviation Regulation expires on October 26, 2000.

Issued in Washington, DC, on October 23, 1997.

Jane F. Garvey,

Administrator.

[FR Doc. 97–28724 Filed 10–24–97; 5:03 pm]

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federal register

Thursday
October 30, 1997

Part VI

Department of Education

National Institute on Disability and Rehabilitation Research; Rehabilitation Engineering Research Centers; Proposed Funding Priorities for Fiscal Years 98–99; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Rehabilitation Engineering Research Centers; Proposed Funding Priorities for Fiscal Years 1998–99

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priorities for Fiscal Years 1998–1999 for Rehabilitation Engineering Research Centers.

SUMMARY: The Secretary proposes funding priorities for four Rehabilitation Engineering Research Centers (RERCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1998–1999. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Comments must be received on or before December 1, 1997.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202–2645. Comments may also be sent through the Internet: comment@ed.gov

You must include the term "Engineering Research Centers" in the electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains proposed priorities under the Disability and Rehabilitation Research Projects and Centers program for RERCs related to information technology access, communication enhancement, ergonomic solutions for employment, and hearing enhancement.

The authority for RERCs is contained in section 204(b)(3) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(b)(3)). Under this program the Secretary makes awards to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. An RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization.

These proposed priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 761a(g) and 762).

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of a particular project depends on the final priority, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the notice of final priorities.

Description of the Rehabilitation Engineering Research Center Program

RERCs carry out research or demonstration activities by:

(a) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (1) solve rehabilitation problems and remove environmental barriers, and (2) study new or emerging technologies, products, or environments;

(b) Demonstrating and disseminating (1) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas, and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or

(c) Facilitating service delivery systems change through (1) the development, evaluation, and dissemination of consumer-responsive and individual and family centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services, and (2) other scientific research to assist in meeting the employment and independent needs of individuals with severe disabilities.

Each RERC must provide training opportunities to individuals, including individuals with disabilities, to become researchers of rehabilitation technology and practitioners of rehabilitation technology in conjunction with institutions of higher education and nonprofit organizations.

General

The Secretary proposes that the following requirements apply to these RERCs pursuant to these absolute priorities unless noted otherwise:

The RERC must have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to the marketplace. The RERC must evaluate the efficacy and safety of its new products, instrumentation, or assistive devices.

The RERC must provide graduate-level research training to build capacity for engineering research in the rehabilitation field and to provide training in the applications of new technology to service providers and to individuals with disabilities and their families.

The RERC must involve individuals with disabilities and, if appropriate, their family members in planning and implementing the research, development, and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

The RERC must share information and data, and, as appropriate, collaborate on research and training with other NIDRR-supported grantees including, but not limited to, the Americans with Disabilities Act (ADA) Disability and Business Technical Assistance Centers, other related RERCs and RRTCs, and grantees under the Technology-Related Assistance for Individuals with Disabilities Act.

The RERC must conduct a state-of-the-science conference in the third year of the grant and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant.

The RERC must develop and implement a utilization plan for ensuring that all new and improved technologies developed by the RERC are

successfully transferred to the marketplace.

The RERC must develop and implement in consultation with the NIDRR-supported National Center for the Dissemination of Disability Research a plan to disseminate the RERC's research results to disability organizations, persons with disabilities, businesses, manufacturers, professional journals, and other appropriate parties.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities.

Proposed Priority 1: Information Technology Access

Background

High speed computers, high speed modems, sophisticated telecommunication networks, cable networks, intranets, the Internet, the World Wide Web (www), and satellites constitute an unparalled global information network. However, the proliferation of information technology has also created problems of accessibility for persons with disabilities (Paciello, M., *People with Disabilities Can't Access the Web,* Yuri Rubinsky Insight Foundation, 1997). Persons with disabilities will be significantly disadvantaged if this new generation of information technology is inaccessible. Promoting accessibility to this dynamic field is a highly technical and complicated task that will place unique demands on an RERC to serve as a resource to a wide range of industry and government officials, as well as persons with disabilities.

The Internet is expanding at a phenomenal rate. There were 1,000 Internet host computers worldwide in 1980. That number increased to 200,000 in 1996 and is expected to reach 12 million by the year 2000. The number of Internet users has virtually doubled every year over the past three years from an estimated 16 million in 1995 to 68 million in 1997 (*Computer Industry Forecasts,* Third Quarter, 1997). Emerging nomadic technologies will enable individuals to access information systems from virtually anywhere, at anytime, and in entirely visual, audio, or mixed modes.

The Internet and World Wide Web are also undergoing dramatic structural changes. Internet 2 is a consortium of academic institutions planning to interconnect its members with a new high-bandwidth Internet that will support advanced applications that are not possible or practical on the current Internet (Kennedy, K., Testimony Before the Senate Commerce, Science, and Transportation Committee; Subcommittee on Communications, June 3, 1997). Once developed, the Next Generation Internet will interconnect 100 Federal research institutions and their research partners with a network capable of operating at speeds 100 to 1000 times faster than today's Internet (Lane, N., Testimony Before the Senate Commerce, Science, and Transportation Committee; Subcommittee on Communications, June 3, 1997). In spring of 1997, the International World Wide Web Consortium held special workshops at their Sixth International World Wide Web Conference that focused on developing strategies for designing accessibility into the Web core environment.

New generations of computer and information technologies become available long before anyone has fully grasped the implications of the previous generation (Kelly, H., Testimony Before the Senate Commerce, Science, and Transportation Committee; Subcommittee on Communications, June 3, 1997). Product cycles and lifetimes are measured in months, not years. There are many small high technology firms that remain virtually unknown until they announce their product. These firms may have little, or no experience with design accessibility. In addition, the industry is highly competitive, and companies may not be willing to incorporate accessible design features into their products if they believe it involves additional development time and expense.

Designing accessible features into new information technologies early in the design process provides persons with disabilities with immediate access and is more cost effective than retrofitting. Increasingly, functions are integrated onto single chips and motherboards, obviating the need for third party accessories such as sound cards or voice input devices, and making changes or modifications to these built-in features difficult or impossible. The earlier accessibility occurs in the design process for new products, the easier it is to incorporate accessibility features.

Universal design is a process whereby environments and products are designed with built-in flexibility so they are usable by all people, regardless of age and ability, at no additional cost to the user. While advances in computers and information technologies create new opportunities for some individuals, they create barriers for others. Information presented in graphical modes (i.e., images, photographs, icons) pose problems for people who are blind unless there are built-in "hooks" that can be identified by the user's screen reader. Conversely, audio cues (beeps) do not convey information to individuals who are deaf or hard of hearing. The proliferation of public access terminals creates unique accessibility challenges. Access to these terminals requires the use of keyboards, touch screens, telephone handsets, and smart cards and will require the development of flexible, multi-modal interface techniques that can work across all disabilities.

The ability to access computer-based information technologies is quickly becoming a prerequisite for successful employment. Companies are increasingly using internal networks, commonly referred to as intranets, to share information within the company. This presents unique problems for individuals with disabilities if the company uses proprietary software and databases that are specifically designed for their company and do not follow standard protocols. In those cases, the information may be inaccessible to individuals who use assistive devices (e.g., screen readers) to access their computers.

There are emerging information and communications policy issues that will have an enormous impact on technology development. Section 508 of the Rehabilitation Act of 1973, as amended, and the Telecommunications Act of 1996 require the development of accessibility standards and guidelines that direct government agencies, Federal customers and contractors, manufacturers, and developers to address accessibility for new and existing products.

Although computer and information technologies are expanding at phenomenal rates, it is also important to recognize that there are many individuals with disabilities who have problems accessing the current generation of technologies (e.g., integrating assistive devices with existing computer workstations). Continued support and guidance for these individuals are necessary to promote access to the computers and information systems they currently use.

Proposed Priority 1

The Secretary proposes to establish an RERC on information technology access for the purposes of developing technological solutions and promoting access for individuals with disabilities to current and emerging information technologies and technology interfaces,

including hardware, software, networks, nomadic technologies, the Internet and the World Wide Web. The RERC must:

(a) Develop and evaluate technological solutions in collaboration with industry to promote accessibility and universal design at the outset of the development of information technologies including software, hardware, intranets, and nomadic technologies;

(b) Develop through research and in collaboration with industry flexible, multi-modal interface techniques for computer and information technologies that provide universal access for all individuals with disabilities;

(c) Develop and disseminate strategies for integrating current accessibility features into newer generations of computer and information systems;

(d) Develop through research and in collaboration with Federal agencies, universities and industry the technologies necessary to promote access to current and emerging generations of the Internet and the World Wide Web for persons with disabilities;

(e) Develop and evaluate technologies and strategies to promote universal access to intranet systems;

(f) Provide technical assistance to public and private organizations responsible for developing policies, guidelines and standards that affect the accessibility of information technology products and systems that are developed, manufactured, and implemented; and

(g) Provide technical assistance and guidance to individuals with disabilities and employers on accessibility problems affecting current computer and information systems.

In carrying out the purposes of the priority, the RERC shall coordinate on research projects of mutual interest with the NIDRR-funded RERC on Telecommunications.

Proposed Priority 2: Communication Enhancement

Background

Speech and language disorders affect the way people talk and understand language, range from mild to significant, and may be developmental or acquired. According to the American Speech-Language and Hearing Association (ASHA), approximately 14 million individuals may be described as having a speech/language disorder (Bello, J., *Communication Facts*, ASHA Research Division, 1994). Two million of those individuals experience significant communication disorders and need access to augmentative and alternative communication (AAC) (Beukelman, D., *Augmentative and Alternative Communication*, Vol. 11, June, 1995). For the purpose of this priority, augmentative and alternative communication refers to all forms of communication that enhance or supplement comprehension, speech, and writing, including electronic devices and communication boards.

NIDRR is proposing to define the target population for this RERC as those persons with significant communication disorders and is particularly interested in receiving public comments on how the field defines significant communication disorders.

Historically, augmentative and alternative communication has been associated with specific technologies that provide individuals who have significant communication disorders with some type of alternative output. Research documenting successful AAC use has been confined primarily to adolescents and adults with reasonably intact cognitive capabilities and moderate to significant motor impairment (Shane, H., Presentation at ASHA Annual Convention, Seattle, 1995). This limited approach does not address the needs of all persons with significant communication disorders such as persons with mental retardation, aphasia, traumatic brain injury, and autism. A more holistic approach to communication enhancement strategies for persons with significant communication disorders must take into account the complexities of human language and incorporate those factors as unique physical, cognitive, and sensory manifestations and individualized learning styles.

There is a need for new and improved AAC technologies that take the more holistic approach to AAC intervention by addressing input technologies, language processing, and output strategies for a wide range of disabilities. These new or improved technologies could address an array of issues, including, but not limited to: speed enhancement and rate of communication that enable the user to operate in or close to real-time; cosmesis and aesthetics of devices; ergonomic and human factors relationships to interventions and technologies for significant communication disorders; quality, diversity, and naturalness of speech output as it relates to a user's actual voice; human and machine interface and multiple control options; using technology to reduce the burden on users with physical disabilities; reliability, portability, and cost; and developing and disseminating measurable outcomes of research.

Studies of the brain and language acquisition emphasize the importance of addressing the language needs of toddlers and school aged children who use or could use AAC (Blackstone, S., *Augmentative Communication News*, Vol. 10, No. 1, 1997). Often children and others with significant communication disorders encounter difficulty in processing and comprehending spoken language. In order to address the needs of these children and adults with significant communication disorders, systems to enhance communication must support comprehension as well as expression.

Reading and writing are interrelated skills that emerge as part of an interactive language and communication process that begins early in life and continues for approximately 6 years. This process is referred to as emergent literacy. Users of AAC in contrast to those who do not use AAC are often found to be in a phase of emergent literacy for many more years (Koppenhaver, D., et. al., *Technology and Disability*, Vol 2., No. 3, 1993). Emergent literacy and AAC use are interrelated processes. This relationship has an impact on the way in that the next generation of technology for communication enhancement should be studied and developed. Research issues related to emergent literacy of AAC users include, but are not limited to: the effects of AAC use on reading and writing development; differences in written language development between AAC users and non-users; the effects of early AAC use on emergent literacy; and the impact of different types of technologies on better understanding and use of written language in AAC users.

Aging presents a unique challenge to AAC researchers because technologies must address linguistic, speech, and sensory deterioration as well as tolerance for technology. As persons age, the need for communication enhancement technology increases, yet, according to data reported by the National Health Interview Survey in 1990 only six-tenths of one percent of individuals aged 65 or older were using AAC technology. Elderly persons with acquired communication disorders encounter a lack of awareness on the part of service providers and an absence of communication services in general.

To date there has been only minimal attention to the job options available for persons with disabilities who use AAC. Anecdotal reports suggest that individuals with severe communication disorders are frequently considered unemployable. The high rate of unemployment results from a number of

factors including, but not limited to: lack of skills, inadequate job preparation; attitudinal barriers; transportation barriers; architectural and accommodation barriers; and limitations in the AAC technology (Light, J., et. al., *AAC*, Vol. 12, 1996). Issues related to unemployment for users of AAC devices include, but are not limited to, compatibility with other technology on the worksite and the ability of the AAC user to transition easily from one task to another.

There are over 40 companies in the United States developing, manufacturing and distributing AAC devices. The next generation of development must challenge conventional AAC approaches and improve the way in that new technologies incorporate and blend principles of communication theories and engineering. Communicative competence ensures that individuals are able to attain communication goals that include expressing needs and wants, developing social skills and routines, and exchanging information (Light, J., *AAC*, Vol. 13, 1997). Communication competence is built over time through improved science, engineering, and the modification of environments, parameters, opportunities and instruction as well as improving communication tools.

Proposed Priority 2

The Secretary proposes to establish an RERC on communication enhancement to improve AAC technologies that can further the development of communication, language, natural speech, discourse skills, and literacy of persons with significant communication disorders. The RERC must:

(a) Develop and evaluate in collaboration with industry improved AAC technologies for individuals with significant communication disorders;

(b) Develop and evaluate strategies that promote literacy proficiency for AAC users;

(c) Develop and evaluate communication enhancement strategies and AAC technologies that factor in the speech, linguistic and multiple sensory needs of the elderly;

(d) Investigate and disseminate strategies to build the capacity of service providers and increase their involvement with elderly persons with significant communication disorders who use or could use AAC; and

(e) Identify barriers that negatively affect the employment status of individuals with significant communication disorders who use, or could use, AAC and develop and evaluate approaches to improve their employment status.

In carrying out the purposes of the priority, the RERC must:

- Coordinate on research projects of mutual interest with the NIDRR-funded RERC on Hearing Enhancement;
- Address the needs of individuals of all ages with significant communication disorders including, but not limited to, toddlers and the elderly; and
- Address the needs of persons with developmental disabilities and acquired disabilities including but not limited to mental retardation, aphasia, traumatic brain injury, and autism.

Proposed Priority 3: Ergonomic Solutions for Employment

Background

The familiar components of the work environment (i.e., tools, machines, and equipment) often are designed without adequate consideration for the people who must use them. Similarly, work tasks may require capabilities that individuals do not have or cannot sustain over long periods of time without injury. Improperly designed workplaces can lead to fatigue, discomfort, and injury that result in reduced productivity and increased costs for employers. These same work environment components may present additional physical barriers to persons with disabilities and negatively impact their employment status.

The Bureau of Labor Statistics estimates that 62 percent of all workplace injuries in 1995 resulted from trauma caused by repetitive stress injuries (RSI) (commonly referred to as cumulative trauma disorders or CTDs)—up from 15 percent in the early 1980s. The National Institute for Occupational Safety and Health (NIOSH) estimates that annual U.S. medical costs from repetitive stress injuries total $13 billion (NIOSH, "Musculoskeletal Disorders and Workplace Factors," July, 1997), and the Labor Department's Occupational Safety and Health Administration (OSHA) has estimated overall costs at nearly $100 billion a year when one considers lost work time, lost productivity, and retraining costs.

Ergonomics is an interdisciplinary field concerned with the performance and safety of individuals at work and how they cope with the work environment, interact with machines, and, in general, negotiate their work surroundings (Scheer, S. and Mital, A., "Ergonomics," *Archives of Physical Medicine & Rehabilitation*, Volume 78, pg. 36, March, 1997). Ergonomic principles are based on a combination of science, engineering, and biomechanics (the study of the body as a system operating under two sets of laws: Newtonian mechanics and the biological laws of life) and are used to promote the proper design of products, workplaces, and equipment (Kroemer, K.H.E., et. al., *Ergonomics: How to Design for Ease & Efficiency*, Prentice Hall, N.J., pgs. 6–7, 1994). When these principles are applied correctly, the incidence and severity of musculoskeletal disorders decrease (Stobbe, T.J., "Occupational Ergonomics and Injury Prevention," *Occupational Medicine*, pgs. 531–543, July, 1996) thereby reducing the likelihood of work related injuries and employer costs.

Cumulative trauma disorders (CTDs) are a class of musculoskeletal disorders involving nerves, tendons, muscles and supporting bony structures (i.e., back, neck, shoulders, and hands). They represent a wide range of disorders that can differ in severity from mild periodic conditions to those that are severe, chronic and debilitating. Since the early 1980s, there has been a dramatic increase in CTDs. OSHA attributes much of this increase to changes in production processes and technologies, resulting in more specialized tasks with increased repetitions and higher assembly line speeds. Two of the most frequently occurring, occupationally induced CTDs are carpal tunnel syndrome and low back pain.

Carpal tunnel syndrome is a condition caused by pressure on the median nerve as it passes through the carpal tunnel of the wrist; it results in the gradual onset of numbness and tingling in one's thumb and the first two and a half fingers of the hand.

If allowed to continue, carpal tunnel syndrome may cause pain, muscle atrophy at the base of the thumb, and clumsiness (Phalen, G.S., "The Carpal-Tunnel Syndrome: Seventeen Year's Experience in diagnosis and Treatment of Six-Hundred Fifty-Four Hands," *The Journal of Bone and Joint Surgery*, pgs. 211–228, 1996). Carpal tunnel syndrome is recognized as a disabling condition of the hand caused by excessive or repetitive movements, undesirable hand positions, or exertions that impose prolonged loads on the affected tissues (Huenting, H., et. al., "Constrained Postures in Accounting Machine Operations," *Applied Ergonomic*, Volume 11, pgs.145–149, 1980).

Improper working posture is a major factor in the development of lower back pain. The strain on one's body may be caused by external loads (e.g., when one lifts, lowers, pulls, pushes, carries, holds onto heavy objects or any combination of these factors) or by simply moving one's own body or by

maintaining postural support using muscle tension alone. In addition to the loss in function and pain, the direct and indirect costs associated with lower back injuries are significant. There is a need for reliable and validated measurement tools to measure mechanical strains within the body and to incorporate the various findings into models of strains and capabilities (Kroemer, K.H.E., op. cit., pgs. 473–475).

The ability to perform physical work depends greatly upon a number of variables including an individual's age, size, strength, overall health and fitness, training, motivation, and one's physical dexterity. A common approach to matching an individual's work capacity with specific job tasks is to assess the individual's overall energy capacity by measuring heart rate and oxygen consumption while on a treadmill or bicycle ergometer and then comparing that information with the amount of energy it takes for a "normal" person to do the specific job tasks (Kroemer, K.H.E, op. cit., pgs. 118–131). Improper matches can lead to early fatigue, and impact a person's ability to do the job tasks safely and efficiently.

Individuals with disabilities present unique ergonomic challenges particularly if they use assistive devices to overcome deficits and function independently. The use of ergonomic knowledge in rehabilitation engineering is widespread, ranging from wrist splints to environmental control systems. Technology for people with significant disabilities depends increasingly on the development and implementation of sophisticated devices including voice input systems, screen readers, and eye tracking systems. However, development alone of those types of devices does not ensure success. It is sometimes necessary to quantitatively measure one's residual capabilities and energy capacity and compare these results with specific job tasks. After selecting the appropriate ergonomic solutions, it is necessary to have the individual demonstrate the usability of those solutions within the worksite environment and make the necessary changes or adaptations to ensure proper use and fit. There are testing devices and procedures that have been developed to quantitatively measure the residual capabilities of impaired persons, such as the Basic Elements of Performance Test and the Available Motions Inventory Test (Smith, R.V. and Leslie, J.H., *Rehabilitation Engineering*, CRC Press, pgs. 127–143, 1990). These tests measure an individual's ability for specific tasks (i.e., reach, grasp, manipulation), but do not measure one's ability to incorporate complex assistive devices into the workplace of people with significant disabilities.

Elderly individuals are working longer than ever before and the proportion of people with work disability (defined as a limitation in work due to chronic illness or impairment) increases with age (Disability Statistics Program, "People with Work Disability in the U.S.," *Disability Statistics Abstract*, U.S. Department of Education, Volume 4, May, 1992). Older workers face unique ergonomic challenges due to other changes that occur naturally as part of the aging process (i.e., changes in biomechanical features, respiratory capabilities, visual functions, hearing, reaction times, etc). Without proper ergonomic design and strategies, older workers could well find themselves at an unnecessary disadvantage due to compromised productivity and health.

Proposed Priority 3

The Secretary proposes to establish an RERC on ergonomic solutions for employment to develop ergonomic strategies and devices to reduce and prevent at the outset of cumulative trauma disorders and to assist persons with disabilities in obtaining and maintaining appropriate employment. The RERC must:

(a) Investigate the biomechanical factors that lead to cumulative trauma disorders including, but not necessarily limited to, carpal tunnel syndrome and low back injuries;

(b) Develop and evaluate worksite ergonomic analysis tools to determine the causes of ergonomic stress associated with repetitive motions, awkward postures, and excessive energy expenditure;

(c) Investigate and improve existing ergonomic strategies and devices used to prevent cumulative trauma disorders and develop new strategies when appropriate;

(d) Design and develop ergonomic strategies and devices for integration of ergonomic solutions for workers with disabilities; and

(e) Design and develop ergonomic strategies and devices to reduce and prevent cumulative trauma disorders among elderly workers.

In carrying out the purposes of the priority, the RERC shall coordinate on research projects of mutual interest with the RRTC on Workplace Supports to Improve Employment Outcomes.

Proposed Priority 4: Hearing Enhancement

Background

Individuals whose hearing is impaired, but who can understand conversational speech with, or without, amplification are hard-of-hearing (HoH). Individuals classified as HoH range in age from infants to the elderly. The National Center for Health Statistics (NCHS), using the "Gallaudet Hearing Scale" that is self-reporting and quantifies the amount of interference with hearing in ordinary day-to-day situations, estimates that the number of persons who are HoH and who might benefit from using a hearing aid ranges from 20 million to 22 million ("National Health Survey," Series 10, No. 188, 1994).

Developments over the past five years have resulted in significant growth in digital hearing aid technology, improved evaluation of hearing loss, especially in very young children, improved computer assisted fitting of hearing aids, and more cosmetically acceptable hearing aids that do not sacrifice important functions for the sake of appearance. Modern science and technology continue to offer even greater opportunity for improvements in the simplification and automation of hearing loss evaluation and in the proper fitting of appropriate hearing aids to individual users. Concurrently there have been important developments in related areas, such as assistive listening devices (ALDs) and in automatic speech recognition (ASR), a technology that enables a person to dictate words into a microphone and have those words converted into computer-language text. The 1996 National Strategic Plan of the National Institute on Deafness and Other Communication Disorders (NIDCD) reflects a growing realization that new technology offers potential relief from the symptoms of tinnitus. New developments in ultra-thin circuit boards and chips, flash ROM, better power management, and other forms of emerging technology offer increasing opportunities to expand features available in the next generation of hearing enhancing devices.

While improving, consistent and early identification of hearing loss in small children remains problematic. The diagnostic technology needs to be simplified and made available to pediatric and child care personnel with minimal training in audiology.

The proper fitting of hearing aids ensures that tonal quality, amplification levels, and environmental noise are controlled to the maximum extent

possible. New developments in sophisticated digital hearing technology must be accompanied by new training and fitting procedures to ensure that new multi-channel aids deliver maximum performance.

Tinnitus affects about 17 percent of the general population and about 33 percent of the elderly (Jastreboff, P. and Hazell, J., "Neurophysiological Approaches to Tinnitus" *British Journal of Audiology*, 1993). Tinnitus is described as an incessant ringing in the ears or other head noise that is heard when there is no external cause for that noise. Currently, there is no cure for tinnitus (Goldstein, B. & Shulman, A., "Tinnitus Masking—A Longitudinal Study of Efficacy/Diagnosis 1977–1994." Proceedings of the Fifth International Tinnitus Seminar, 1995). Often, tinnitus accompanies hearing loss. However, there are cases of severe hearing loss without tinnitus. Tinnitus also occurs without evidence of other auditory system diseases or disorders.

This variation drives the need for better dual channel hearing aid/tinnitus maskers and single channel tinnitus maskers. Although there are currently some devices on the market that combine amplification and masking, those efforts have not been widely accepted, possibly because recent technical developments in miniaturizing have not been fully exploited (Gold, S., et. al., "Selection and Fitting of Noise Generators and Hearing Aids for Tinnitus Patients." Proceedings of the Fifth International Tinnitus Seminar, 1995).

In recent years there have been significant advances in assistive devices that enhance the ability of individuals to integrate more successfully in personal and business arenas. In a survey by one of the largest organizations for the HoH, Self-Help for the Hard of Hearing (SHHH), it was found that nearly half of its membership used assistive listening devices, both personal devices and large room systems (Sorkin, D., "Understanding Our Needs: The SHHH Member Survey Looks at Hearing Aids." *SHHH Journal*, Vol. 16, No. 4, 1995). Perhaps the most promising new technology for broadening the application of assistive devices is ASR. The potential for using speech-to-print mechanisms based on ASR offers promising benefits including real-time transcription in meetings and automated telephone relay services to HoH persons. However, the mechanisms to realize the full potential of those benefits for this population remain to be developed.

There is a need for improvements in the shielding of hearing aid components from the emission of extraneous electronic signals. The Federal government is working to establish standards to reduce those signals from a multitude of devices regulated by the Federal Communications Commission (FCC). However, the probability of blanket suppression of all sources is low.

Proposed Priority 4

The Secretary proposes to establish an RERC on hearing enhancement to develop new and improve existing technologies for persons who are HoH. The RERC must:

(a) Evaluate current technology available for hearing aids, ALDs, tinnitus maskers, and ASR systems and develop improvements for these technologies including, but not limited to, improved shielding for extraneous electronic signals and new training and fitting procedures for new multi-channel aids;

(b) Develop and evaluate new, emerging technology for integration into more advanced versions of next generation hearing aids and ALDs;

(c) Automate and simplify methods for conducting hearing loss evaluation in infants, children, and adults;

(d) Develop training and technical assistance materials and provide training and technical assistance to hearing aid developers, technicians, and appropriate organizations representing persons who are HoH to enable them to effectively address the hearing enhancement needs of individuals who are HoH;

(e) Develop and evaluate protocols for incorporating improved tinnitus masking technology into next generation hearing aid models;

(f) Develop and evaluate protocols for efficient integration of ASR with interfacing needs of persons with hearing loss including, but not limited to, "real-time captioning," automated relay telephone systems, and personal hand-held communicators; and

(g) Develop training and technical assistance materials and provide training and technical assistance to hearing aid fitters, pediatric and audiology personnel, appropriate counseling organizations, and organizations representing people who are HoH to enable them to address effectively the hearing aid needs and adjustment to hearing loss problems experienced by persons who are HoH and also to provide appropriate counseling and guidance to individuals who experience tinnitus;

In carrying out the purposes of the priority, the RERC shall coordinate on research projects of mutual interest with the NIDRR-funded RERCs on Universal Telecommunications Access and Communication Enhancement and the NIDRR-funded RRTC on HoH/Late Deafened.

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Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3424, Switzer Building, 330 C Street S.W., Washington, D.C., between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR Parts 350 and 353.

Program Authority: 29 U.S.C. 760–762. (Catalog of Federal Domestic Assistance Number 84.133E, Rehabilitation Engineering Research Centers)

Dated: October 23, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–28693 Filed 10–29–97; 8:45 am]
BILLING CODE 4000–01–P

federal register

Thursday
October 30, 1997

Part VII

Department of Education

National Awards Program for Model Professional Development Inviting Applications for New Awards for Fiscal Year (FY) 1998; Notices

DEPARTMENT OF EDUCATION

RIN 1850–ZA02

National Awards Program for Model Professional Development

AGENCY: Department of Education.

ACTION: Notice of final eligibility and selection criteria.

SUMMARY: The Secretary announces eligibility and selection criteria to govern the National Awards Program for Model Professional Development for Fiscal Year 1998. Under these criteria, the National Awards Program will recognize a variety of schools (public and private) and school districts with model professional development activities in the pre-kindergarten through twelfth grade levels that have led to increases in student achievement.

EFFECTIVE DATE: These criteria take effect December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Sharon Horn, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW, Room 506e, Washington, DC 20208–5644. Telephone: 202–219–2203 or 202–219–2187. Inquiries also may be sent by e-mail to sharon__horn@ed.gov or by FAX at 202–219–2198. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Through this notice the Secretary announces definitions and criteria to govern applications for recognition submitted under the second National Awards Program for Model Professional Development. This program began in 1996, in coordination with a wide range of national education organizations, to highlight and recognize schools and school districts whose professional development activities are aligned with the statement of Mission and Principles of Professional Development that the Department developed in 1994. See Appendix A. This second National Awards Program, to be conducted during Fiscal Year (FY) 1998, will be implemented in ways similar to last year's program (see, for example, the Notice Inviting Applications for Awards published in the **Federal Register** on June 14, 1996 at 61 FR 30450) but with criteria designed to better inform applicants of the kind of information that successful applicants will need to provide. Again this year, the Secretary intends to recognize successful applicants at a ceremony in Washington, DC, and present each successful applicant with an award of not less than $5,000 that the recipient could use to expand, promote, or publicize its professional development activities.

The reasons for wanting to continue the National Awards Program are clear. Schools and school districts throughout the Nation are undertaking efforts to raise academic standards and to improve the academic achievement of all students. For these efforts to be successful they must include strategies for permitting teachers (and other school and local educational agency (LEA) staff) to obtain the skills and knowledge they need to enable all students to achieve. Indeed, whatever the school reform initiative, teachers are the core. However, teachers need access to new knowledge and skills to enable them to continue to teach to higher standards and to respond to the challenges facing education today.

Realizing that high-quality professional development must be at the core of any effort to achieve educational excellence, the Secretary in 1994 directed a broadly representative team within the U.S. Department of Education to examine the best available research and exemplary practices related to professional development and work with the field to develop a set of basic principles of high-quality professional development. Out of this national effort came the Department's Statement of Mission and Principles of Professional Development. This statement reflected both extensive collaboration with a wide range of education constituents and review of public comment received on a draft Statement of Mission and Principles of Professional Development published in the **Federal Register** on December 9, 1994 (59 FR 63773). The Department issued the final Statement of Mission and Principles (Appendix A) in 1995 after review of public comment and re-examination of the best available research on exemplary practices. This Statement—grounded in the practical wisdom of leading educators across the country—describes the kind of professional development that, if implemented, maintained, and supported, will have a positive and lasting effect on teaching and learning in America.

The Statement of Mission and Principles of Professional Development represents a framework for guiding school and school district staff as they design and implement their professional development activities. Many of the same national education organizations that worked with the Department to develop the Mission and Principles of Professional Development sought the Department's help last year in identifying and recognizing those professional development efforts across the pre-kindergarten through twelfth grade spectrum that reflect the Mission and Principles. Given the efforts of schools and school districts throughout the Nation to pursue school reform initiatives, the Secretary agreed with these organizations about the urgent need to identify sites whose professional development activities can be models for other schools and districts that are working to enhance their own professional development activities.

Therefore, the Secretary last year announced the first National Awards Program for Model Professional Development. The public expressed great interest in the program, and the Department received over 100 applications. In February of this year, the Department recognized five schools and school districts in Massachusetts, Connecticut, Kansas, and California for the high quality of their professional development activities and the link between those activities and improved student learning. But the importance of high-quality professional development to successful strategies to increase student achievement demands that this awards program be continued and that more schools and school districts have the opportunity for national recognition. Therefore, the Secretary is pleased to announce definitions and criteria to govern the second National Awards Program.

On August 19, 1997, the Acting Assistant Secretary for Educational Research and Improvement published a notice of proposed eligibility and selection criteria for this program in the **Federal Register** (62 FR 44194–98). In response to public comment, the final eligibility criteria invite applicants to identify and describe any important partnering with institutions of higher education and other entities that have contributed to the high quality of their professional development activities. Otherwise, except for minor editorial revisions made to enhance clarity, there are no differences between the eligibility and selection criteria proposed in that notice and the final eligibility and selection criteria announced in this notice.

Note: This notice does not solicit applications. A notice inviting applications

under this competition is published elsewhere in this edition of the **Federal Register**.

Summary of Comments and Changes

In response to the invitation in the notice of proposed eligibility and selection criteria, the Department received two comments.

Comment: One commenter noted that his State requires professional development to be aligned with State education standards, and requested that the "Supplementary Information" section of the notice state that successful applicants must demonstrate a link between their professional development activities and improved student achievement and teacher effectiveness "toward attaining State standards."

Discussion: The notice of proposed eligibility and selection criteria would have required applicants to demonstrate a link between their professional development activities and "high" standards. These high standards are the content and student performance standards that states and school districts have adopted or are adopting as key parts of their strategies to increase student achievement. Upon review of the commenter's suggestion, no change in the background discussion contained in the "Supplementary Information" section of the notice seems necessary. However, the language of Selection Criterion B, "Goals and Outcomes," has been clarified to require applicants to address "how professional development goals and outcomes promote teaching and learning to State or local standards, or both." Moreover, while alignment with challenging State content and student performance standards is crucial to successful education reform, the language of the criterion is not limited to "State standards" so as not to penalize schools and districts with local standards that now are more rigorous than their States' standards.

Changes: Selection Criterion B, "Goals and Outcomes," has been changed accordingly.

Comment: One commenter noted the importance that institutions of higher education (IHEs) play in promoting high-quality professional development at the school and school district level, and urged that eligibility for the National Awards Program be extended to IHEs.

Discussion: Individual IHEs do play an increasingly important role in helping many schools and school districts improve the quality of their professional development activities. However, the Secretary has determined that eligibility for the program should continue to be limited to schools and school districts—the places where K–12 teaching and learning actually occurs—both to maintain focus on the quality professional development within schools and school districts, and because of the difficulty of using common criteria to evaluate the relative merit of applications that otherwise would come from such very different kinds of institutions.

Changes: In view of the comment, the "Eligibility Criteria" section of this notice now specifically invites applicants to describe their partnerships with IHEs and other entities in their applications.

Comment: None.

Discussion: The discussion of "Proposed Selection Procedures" contained in the Notice of Proposed Eligibility and Selection Criteria failed to advise the public that, like last year, the Secretary expects to give recognition under this National Awards Program to no more than ten schools and school districts. In addition, the proposed notice stated that the Secretary anticipated the size of a recipient's monetary award to be between $5,000 and $10,000. While the Secretary still hopes that this is the case, this notice clarifies that the Department anticipates that each successful applicant will receive a monetary award of no less than $5,000.

Changes: The "Selection Procedures" portion of this notice has been changed accordingly.

Eligibility Criteria

As with last year's program, eligible applicants are schools and school districts in the States (including schools located on Indian reservations, and in the District of Columbia, Puerto Rico, and the outlying areas) serving students in the pre-kindergarten through twelfth grade range. While only schools and school districts may apply, the Secretary recognizes that the high quality of a school or district's professional development activities may be the result of its successful partnering with institutions of higher education and other entities such as public and private nonprofit organizations, businesses, and community organizations. The Secretary invites applicants to describe these partnerships in their National Award Program applications.

In addition, this year's program retains application selection criteria that are built on two key elements: (1) A demonstration that the professional development activities are fully aligned with the Mission and Principles of Professional Development, and (2) a demonstration of how, consistent with the Mission and Principles, the professional development activities benefit all affected students and have led to improved student achievement and improved teacher effectiveness. As noted above, the Statement of Mission and Principles of Professional Development reflects broad agreement on what is "best practice." It was prepared in collaboration with a great many national educational associations and upon review of public comment. The Secretary believes that professional development activities can only be considered exemplary if they, in fact, are linked to increased student achievement.

Again this year, the format of applications remains fairly simple. However, the application material has been revised to better identify topics applicants will need to consider in order to demonstrate alignment with the Mission and Principles of Professional Development and a link to increased student achievement. In addition, to promote fairness among those seeking recognition under the National Awards Program, all applications must be prepared in accordance with formatting instructions included in the application packet.

Selection Criteria

Applicants are free to respond to these selection criteria in any way they choose as long as they comply with the formatting requirements set out in the application packet. The degree to which applicants demonstrate alignment with the Mission and Principles of Professional Development and a link to increased student achievement will be evaluated using the following criteria:

Guiding Principles

In evaluating applications for the National Awards Program, reviewers will look to see whether the application, taken as a whole, demonstrates that the school's or school district's professional development activities are comprehensive and lead to improved teacher effectiveness and increased student achievement. In doing so, reviewers will be guided by the extent to which and how well applicants respond to the following criteria, the most important of which would concern objective evidence of success. Each criterion includes one or more questions that are designed to help applicants formulate their responses. It is not necessary for applicants to answer each question individually. But, taken as a whole, the description of their professional development activities must address each criterion and provide enough information so that reviewers

can determine whether the school's or district's professional development is comprehensive and leads to improved teacher effectiveness and increased student achievement. In this regard, this description must provide evidence of improved student achievement and show how the improvement is linked to the professional development activities that have been implemented.

A. Background and Overview of Professional Development

In this section applicants must provide a brief explanation of why they consider professional development in their schools or districts exemplary by describing its key components and relating those to the U.S. Department of Education's Mission and Principles of Professional Development. This description must provide evidence that the professional development activities are not narrowly focused on one subgroup of students or staff within the school or district.

In responding to this criterion, applicants should consider the following questions:

1. What are the infrastructure, content, and process components of professional development in the school or district?

2. How does professional development in the school or district reflect the U.S. Department of Education's Mission and Principles of Professional Development?

3. Why is professional development in the school or district exemplary?

B. Goals and Outcomes

In this section, applicants must describe their professional development goals, how they were developed, how they relate to school improvement, and how they are based on needs assessment and address the achievement of all students (regardless of gender; socio-economic level; disadvantaged status; racial, ethic or cultural background; exceptional abilities or disabilities; or limited English proficiency). Applicants also must address the changes in teaching and student learning that are expected to result from professional development. In doing so, they must include how professional development goals and outcomes promote teaching and learning to State or local standards, or both.

In responding to this criterion, applicants should consider the following questions:

1. What are the broad goals of professional development in its school or district?

2. What are the goals for ALL students' achievement through professional development?

3. What are the ways that the professional development goals are connected to long-term school improvement plans?

4. What process was used to create the professional development goals and plan, and who was involved in the development?

5. What are the ways in which teachers' professional development needs are assessed and incorporated in the plan for professional development?

6. How do the professional development goals and outcomes focus on increasing teachers' expertise in teaching to high standards?

7. What changes in teaching and student learning result from participation in professional development in the school or district? What is the rationale for believing these changes would result in improved teaching and learning?

C. Professional Development Design and Implementation

Overall, the applicant's response to this section must show how the context, content, and processes of its professional development activities are consistent with the Department's Mission and Principles of Professional Development. The description must provide evidence that professional development reflects research and best practice; includes comprehensive evaluation; includes organizational structures (e.g., administrative policy and support) and resources (e.g., use of time, expertise, funds) that support it; promotes continuous inquiry and improvement; and ensures that the larger school community understands its importance to school improvement.

The applicant must describe the data-based processes that are used for ensuring that professional development is connected to the school or district improvement plan and that the professional development design supports the attainment of expected changes in teaching practice and student learning. The description must include any formal and informal processes used to routinely collect information for monitoring how the school or district is progressing toward its goals; for assessing the links between the plan, professional development activities, and teacher and student outcomes; and for adjusting what isn't working.

Applicants already integrating technology into classroom instruction also must include a discussion of how professional development has contributed to ensuring that technology is an effective teaching tool or, if applicable, how technology has been used to support effective professional development.

In responding to this criterion, applicants should consider the following questions:

1. How is professional development a part of what ALL teachers do? What role do administrators and other members of the school community play in professional development?

2. How do the applicant's professional development design and activities reflect research and best practice?

3. How does the applicant's professional development design and activities reflect comprehensive evaluation? What data are routinely collected to assess the alignment of program activities and outcomes? How are collected data used to refine professional development?

4. Why were the specific content, instructional strategies, and learning activities selected for professional development?

5. What are the processes for ensuring and documenting that the improvement plans, professional development activities, and teacher and student outcomes are in alignment?

6. What structures support the implementation of professional development at individual, collegial and organizational levels?

7. What resources and types of sustained support (financial and other) are available for professional development for individuals, groups, and the whole school or district? How are current resources obtained?

8. How does the applicant ensure that the school community understands how the professional development components fit together and connect to the overall school plan?

D. Objective Evidence of Success

This portion of the application is fundamental to the characterization of the applicant's professional development and is the *most important selection criterion* that reviewers will use. Applicants must demonstrate clearly that teacher effectiveness and student learning have improved as a direct result of the implemented professional development. Data that indicate this connection must be provided and discussed; the focus is objective evidence. In doing so, applicants are expected to make a compelling argument for how professional development positively affects outcomes for all teachers and all students, emphasizing areas where any achievement gaps between groups (e.g.,

gender, socio-economic status, ethnicity) have been closed.

In responding to this criterion, applicants should consider the following questions:

1. What evidence is there that demonstrate that professional development in the school or district has improved the effectiveness of all teachers?

2. What evidence is there that professional development in the school or district has improved student achievement across all grade levels and all subject areas?

3. What evidence is there that professional development in the school or district leads to a narrowing of existing achievement gaps between groups of students?

E. Implications for the Field

In this section of the application, applicants must describe the lessons learned as their professional development activities have matured.

In responding to this criterion, applicants should consider the following questions:

1. What knowledge and documentation (e.g., training materials, strategies, or processes) are available that can benefit others?

2. What lessons and practical advice about providing quality professional development has the applicant learned that other schools and districts could use?

Selection Procedures

The Secretary will evaluate applications using unweighted selection criteria. The Secretary believes that the use of unweighted criteria is most appropriate because they will allow the reviewers maximum flexibility to apply their professional judgments in identifying the particular strengths and weaknesses in individual applications. However, to receive recognition under the National Awards Program, reviewers will need to find that the applicant's professional development activities reflect model practices as evidenced by exemplary responses to *each* of the criteria identified under the "Selection Criteria" section of this notice. A key element in review of any application will be the extent to which the applicant demonstrates clear links between professional development activities and increases in student achievement. See Selection Criteria D, *Objective Evidence of Success*. In analyzing the response to Selection Criterion E, *Implications for the Field*, reviewers will not expect the same level of specificity from applications as will be expected in response to the other selection criteria. In examining the response to Selection Criterion E, reviewers will be primarily interested in seeing that applicants have considered the lessons they have learned and can pass on to others.

After an initial screening, the Department will use outside panels of experts to evaluate the quality of the applications against these basic criteria. This stage in the process may include telephone interviews with project contacts to discuss and clarify information, and will lead to the selection of up to twenty semifinalists. The Department then will use outside experts to conduct site visits, which may involve the examination of documentation to confirm the effectiveness of the semifinalists' professional development activities, and the collection of additional supporting information from them. Based on the recommendations of the site reviewers (and possibly through a final panel of outside experts), the Secretary will select those schools or school districts that merit national recognition. Again this year, the Secretary intends to recognize up to ten schools and school districts with the very best professional development practices at a national ceremony in Washington, DC. Successful applicants also will receive other forms of recognition including a monetary award that the Department anticipates will be no less than $5,000 per recipient. Recipients will be able to use these funds to support their professional development activities and make them known to others.

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Program Authority: 20 U.S.C. 8001.

Dated: October 24, 1997.

Ricky T. Takai,

Acting Assistant Secretary for Educational Research and Improvement.

Appendix A—Mission and Principles of Professional Development, U.S. Department of Education—Professional Development Team

July 5, 1995

Professional development plays an essential role in successful education reform. Professional development serves as the bridge between where prospective and experienced educators are now and where they will need to be to meet the new challenges of guiding *all* students in achieving to higher standards of learning and development.

High-quality professional development as envisioned here refers to rigorous and relevant content, strategies, and organizational supports that ensure the preparation and career-long development of teachers and others whose competence, expectations and actions influence the teaching and learning environment. Both pre- and in-service professional development require partnerships among schools, higher education institutions and other appropriate entities to promote inclusive learning communities of everyone who impacts students and their learning. Those within and outside schools need to work together to bring to bear the ideas, commitment and other resources that will be necessary to address important and complex educational issues in a variety of settings and for a diverse student body.

Equitable access for all educators to such professional development opportunities is imperative. Moreover, professional development works best when it is part of a systemwide effort to improve and integrate the recruitment, selection, preparation, initial licensing, induction, ongoing development and support, and advanced certification of educators.

High-quality professional development should incorporate *all* of the principles stated below. Adequately addressing each of these principles is necessary for a full realization of the potential of individuals, school communities and institutions to improve and excel.

The mission of professional development is to prepare and support educators to help all students achieve to high standards of learning and development.—Professional Development

- Focuses on teachers as central to student learning, yet includes all other members of the school community;
- Focuses on individual, collegial, and organizational improvement;
- Respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community;
- Reflects best available research and practice in teaching, learning, and leadership;
- Enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards;
- Promotes continuous inquiry and improvement embedded in the daily life of schools;
- Is planned collaboratively by those who will participate in and facilitate that development;
- Requires substantial time and other resources;
- Is driven by a coherent long-term plan;
- Is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and this assessment guides subsequent professional development efforts.

[FR Doc. 97–28825 Filed 10–29–97; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Awards Program for Model Professional Development; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of the Program: To recognize a variety of schools and school districts with model professional development activities in the pre-kindergarten through twelfth grade levels that have led to increases in student achievement. The FY 1998 competition focuses on schools and school districts that meet the eligibility and selection criteria for this program, as published elsewhere in this issue of the **Federal Register**.

Eligible Applicants: Schools (public and private) and school districts in the States (including schools located on Indian reservations, and in the District of Columbia, Puerto Rico, and the outlying areas).

Deadline for the Transmittal of Applications: January 15, 1998.

Applications Available: November 3, 1997.

Estimated Range of Awards: Not less than $5,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Eligibility and Selection Criteria: The eligibility and selection criteria and selection procedures in the notice of final eligibility and selection criteria for this program, as published elsewhere in this issue of the **Federal Register**, apply to this competition.

For Application Information Contact: To obtain a copy of the application or to obtain information on the program, call or write Sharon Horn, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW—Room 506e, Washington, DC 20208–5644. Telephone: 202–219–2203 or 202–219–2187. Inquiries also may be sent by e-mail to sharon__horn@ed.gov or by FAX at 202–219–2198. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m.

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Dated: October 24, 1997.

Note: The official version of a document is the document published in the **Federal Register.**

Program Authority: 20 U.S.C. 8001.

Ricky T. Takai,

Acting Assistant Secretary for Educational Research and Improvement.

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H.R. 2158/P.L. 105–65

Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Oct. 27, 1997; 111 Stat. 1344)

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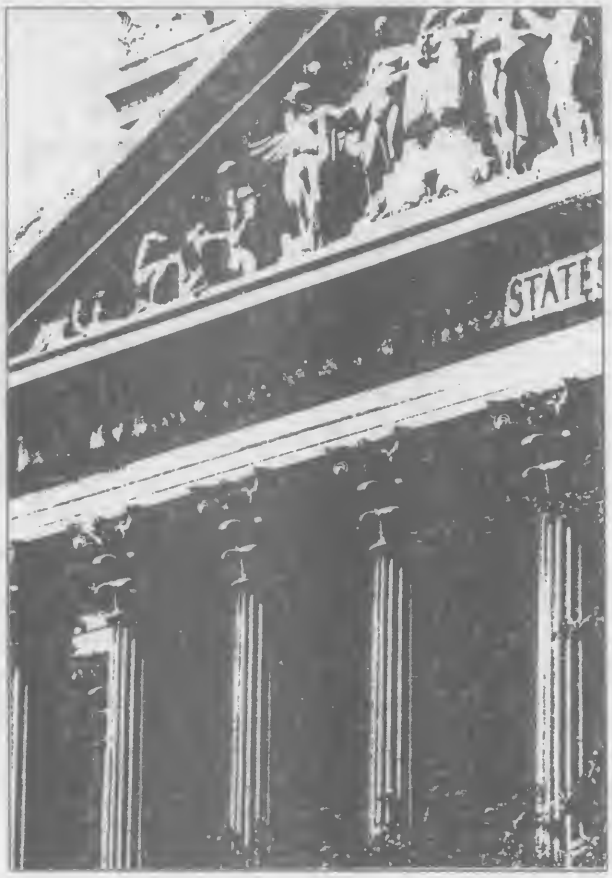

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