8–12–98
Vol. 63 No. 155

Wednesday
August 12, 1998

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(ISSN 0097–6326)

8–12–98
Vol. 63 No. 155
Pages 43067–43286

Federal Register

Wednesday
August 12, 1998

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OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2636

RINs 3209–AA00 and 3209–AA13

Removal of Obsolete Regulations Concerning the Inoperative Statutory Honorarium Bar, Revisions to Related Supplemental Reporting Requirements, and Conforming Technical Amendments

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendments and removals.

SUMMARY: The Office of Government Ethics is removing obsolete executive branch regulatory provisions implementing the statutory honorarium bar, which is no longer legally operative. In addition, OGE is removing related executive branch regulatory provisions concerning a dormant special reporting requirement for payments to charitable organizations in lieu of honoraria. That reporting requirement is being subsumed (for those few to whom it may apply) as part of the overall executive branch financial disclosure regulation, but will remain inactive for now, pending further examination. For conformity with these changes, OGE is also making minor technical amendments to regulatory provisions covering the overall executive branch financial disclosure system and the statutory restrictions for certain employees on outside earned income, employment and affiliations.

DATES: These technical amendments and removals are effective August 12, 1998, except that § 2634.302(a)(2) is stayed indefinitely until OGE makes a final determination about its status. Once that determination is made, OGE will publish an appropriate document in the **Federal Register**, and will also notify executive branch departments and agencies by memorandum.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attn.: Mr. G. Sid Smith. A copy of the OGE Memorandum noted in the "Supplementary Information" section below may be obtained from OGE's Web site on the Internet at http://www.usoge.gov, or by contacting Mr. Smith.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Senior Associate General Counsel, Office of Government Ethics, telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: In *National Treasury Employees Union* v. *United States*, 513 U.S. 454 (1995), the U.S. Supreme Court overturned, as to most executive branch employees, the honorarium bar at 5 U.S.C. app., section 501(b) which had been enacted as part of the Ethics Reform Act of 1989. Subsequently, the Department of Justice determined that because of the scope of the Supreme Court decision, the statutory ban on receipt of honoraria was inoperative as to *all* Government employees. See OGE Memorandum to Designated Agency Ethics Officials, General Counsels and Inspectors General of February 28, 1996 (# DO–96–012). On that basis, this rulemaking removes the provisions in OGE's executive branchwide regulations at subpart B of 5 CFR part 2636 that previously implemented the honorarium bar, which is now legally inoperative. By final rule at 62 FR 48746–48748 (September 17, 1997), OGE has already removed cross-references to the honorarium bar that were contained in the executive branch regulations on financial disclosure and standards of ethical conduct at 5 CFR parts 2634 and 2635.

By this current rulemaking, OGE is also removing from 5 CFR part 2636 the provisions in § 2636.205 on special confidential reporting of information about payments to charitable organizations in lieu of honoraria, as a supplement to employee financial disclosure reports. That requirement was specified in the financial disclosure portion of the Ethics Reform Act of 1989 (5 U.S.C. app., section 102(a)(1)(A)), but has never been activated for the executive branch. The effective date of the provisions in 5 CFR part 2636 to implement this special reporting requirement was deferred several times by OGE, most recently indefinitely at 57 FR 5369 (February 14, 1992), pending development of a reporting form. Subsequently, because of legal uncertainties about the related portion of the Ethics Reform Act of 1989 which had banned receipt of honoraria, as well as overall policy issues about how to implement the reporting requirement itself, this special reporting requirement remained inactive. With the determination by the Department of Justice that the statutory bar on receipt of honoraria is legally inoperative, as discussed above, the implementing provisions of 5 CFR part 2636 on supplemental disclosure are no longer necessary. That results because, by removing a major incentive for payments to charitable organizations in lieu of honoraria (which had been permissible notwithstanding the honorarium bar), the determination that the honorarium bar is no longer operative will virtually eliminate the need for employees to make these supplemental reports, in OGE's opinion. While the statutory requirement for supplemental reporting of information about charitable payments in lieu of honoraria remains, it no longer justifies a separate regulatory structure and form, and the attendant continuing need for distinct Paperwork Reduction Act clearance.

In place thereof, this special supplemental reporting requirement will be preserved in a dormant status, by subsuming its basic outline into the overall executive branch financial disclosure system at 5 CFR part 2634. Minor changes to that part are being made by this current rulemaking to conform with the law by limiting the potential scope of this special reporting requirement to public financial disclosure filers, to eliminate reference to a supplemental report form, and to preserve the supplemental reporting requirement as dormant (not currently effective) for the executive branch, pending further determination of its viability. Its viability remains somewhat of an open question, in light of the inoperability of the related honorarium bar, since these provisions were enacted together as part of the Ethics Reform Act of 1989. If this supplemental reporting requirement is subsequently activated, OGE will notify affected executive branch departments and agencies, and

provide them with appropriate guidance.

Finally, in order to conform with the removals and changes discussed above, OGE is making minor technical amendments to the regulatory provisions in 5 CFR part 2636 concerning restrictions under 5 U.S.C. app., section 501(a) and section 502 on outside earned income, employment and affiliations which apply to certain noncareer employees. Those technical amendments remove references that become obsolete, in light of the changes discussed above.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to these revisions. The notice and delayed effective date are being waived because these technical amendments to certain OGE regulations concern matters of agency organization, practice and procedure. Furthermore, it is in the public interest that the obsolete provisions be removed as soon as possible.

Executive Order 12866

In promulgating these technical amendments to its regulations, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have also been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch agencies and their employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rulemaking, involving technical amendments and removals, eliminates the detailed separate regulatory structure (old OMB paperwork control #3209–0004, now expired), which had been developed but never made effective in the executive branch, for supplemental reporting of payments in lieu of honoraria to charitable organizations. Executive branch employees filing public financial disclosure reports (SF 278s, OMB control #3209–0001) will be advised of this supplemental confidential reporting requirement by separate OGE guidance and by their agencies, if it is subsequently activated. For now, it will be subsumed by the financial disclosure regulation at 5 CFR part 2634, which will preserve the basic outline of this supplemental requirement. Further, if it is activated, OGE expects a very low volume of these supplemental reports, amounting to less than 50 per year for the entire executive branch, with fewer than 10 private citizen filers per year. These paperwork determinations have been approved by the Office of Management and Budget.

List of Subjects

5 CFR Part 2634

Administrative practice and procedure, Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

5 CFR Part 2636

Administrative practice and procedure, Conflict of interests, Government employees, Penalties.

Approved: December 12, 1997.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is amending parts 2634 and 2636 of chapter XVI of 5 CFR as follows:

PART 2634—[AMENDED]

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. In § 2634.302, paragraph (a)(2) is revised to read as follows and is immediately stayed indefinitely:

§ 2634.302 Income.

(a) * * *

(2) In the case of payments to charitable organizations in lieu of honoraria, public filers shall also file a separate confidential listing of recipients, along with dates and amounts of payments, to the extent known. (See 5 U.S.C. app. 102(a)(1)(A) and app. 501(c).)

* * * * *

§ 2634.601 [Amended]

3. Section 2634.601 is amended by removing paragraph (c) and redesignating paragraph (d) as new paragraph (c).

PART 2636—[AMENDED]

4. The authority citation for part 2636 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

5. The heading of part 2636 is revised to read as follows:

PART 2636—LIMITATIONS ON OUTSIDE EARNED INCOME, EMPLOYMENT AND AFFILIATIONS FOR CERTAIN NONCAREER EMPLOYEES

6. Section 2636.101 is revised to read as follows:

§ 2636.101 Purpose.

This part is issued under authority of title VI of the Ethics Reform Act of 1989 (Pub. L. 101–194, as amended), to implement the 15 percent outside earned income limitation at 5 U.S.C. app. 501(a) and the limitations at 5 U.S.C. app. 502 on outside employment and affiliations, which are applicable to certain noncareer employees.

§ 2636.102 [Amended]

7. Section 2636.102 is amended by removing from paragraph (a) the words and terms "or to receive and review reports of honoraria recipients under § 2636.204 of this part".

8. Section 2636.103 is amended by revising paragraph (a)(2)(i) to read as follows:

§ 2636.103 Advisory opinions.

(a) * * *

(2) * * *

(i) Whether a particular entity qualifies as a charitable organization to which a payment in lieu of honoraria may be excluded from the definition of outside earned income and compensation under § 2636.303(b)(7) of this part; or

* * * * *

§ 2636.104 [Amended]

9. Section 2636.104 is amended by removing from the first sentence of paragraph (a) the words "who accepts an honorarium or engages in any other conduct" and adding in their place the words "who engages in any conduct", by removing the last sentence of paragraph (a), and by removing paragraphs (c) and (d).

Subpart B—[Removed and Reserved]

10. Subpart B of part 2636 is removed and reserved.

11. Section 2636.302 is amended by removing the sentence fragment at the end of the undesignated introductory text, by removing paragraphs (a) and (b), and by adding a new sentence at the end of that section to read as follows:

§ 2636.302 Relationship to other laws and regulations.

* * * In particular, a covered noncareer employee should accept compensation only after determining that its receipt does not violate section 102 of Executive Order 12674, as amended, which prohibits a covered noncareer employee who is also a Presidential appointee to a full-time noncareer position from receiving *any* outside earned income for outside employment or for any other activity performed during that Presidential appointment.

12. Section 2636.303 is amended by removing from the penultimate sentence in the undesignated text at the end of paragraph (c) the words and terms "under § 2636.204 of this part" and adding in their place the words and terms "under 5 U.S.C. app. 501(c)", and by revising paragraph (b)(7) to read as follows:

§ 2636.303 Definitions.

* * * * *

(b) * * *

(7) Payments to charitable organizations in lieu of honoraria, as described in 5 U.S.C. app. 501(c) and app. 505; or

* * * * *

[FR Doc. 98–20829 Filed 8–11–98; 8:45 am]

BILLING CODE 6345–01–P

FEDERAL TRADE COMMISSION

5 CFR Part 5701

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Federal Trade Commission

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: The Federal Trade Commission, with the concurrence of the Office of Government Ethics (OGE), is issuing a final rule amendment for employees of the FTC that supplements 5 CFR part 2635, the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), issued by OGE. This supplemental regulation provision narrows for FTC employees restrictions contained in the Standards on employees' personal fundraising activities. The final rule is effective upon issuance.

EFFECTIVE DATE: August 12, 1998.

ADDRESSES: Send comments to Ira S. Kaye, Federal Trade Commission, Room 594, 6th and Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ira S. Kaye, (202) 326–2426, Federal Trade Commission, Office of the General Counsel.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Governmental Ethics (OGE) published a final rule entitled "Standards of Ethical Conduct for Employees of the Executive Branch" (Standards). *See* 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, and amended at 61 FR 42965–42970 (as corrected at 61 FR 48733), 61 FR 50689–50691 (interim rule revisions adopted as final at 62 FR 12531), and 62 FR 48746–48748, with additional grace period extensions at 59 FR 4779–4780, 60 FR 6390–6391, 60 FR 66857–66858, and 61 FR 40950–40952. The Standards, codified at 5 CFR part 2653 and effective February 3, 1993, establish uniform standards of ethical conduct applicable to all executive branch personnel.

The Standards, at 5 CFR 2635.105, authorize executive branch agencies, with OGE's concurrence, to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. On May 27, 1993, the FTC published, with OGE's concurrence, an interim rule establishing a supplemental standard of conduct, 5 CFR 5701.101, requiring that all FTC employees receive prior approval before engaging in outside employment (58 FR 30695–30696). The interim rule prescribed a 45-day comment period and invited comments from all interested parties. This interim rule is not being finalized at this time.

The FTC is now issuing a second supplemental regulation because it has determined that a new provision concerning fundraising activities, to be codified in a new § 5701.102 of 5 CFR, is currently necessary to the successful implementation of the Commission's ethics program.

II. Analysis of the Amendment

New Section 5701.102 of the final rule supplements the executive branch-wide Standards at 5 CFR 2635.808(c) regarding fundraising in a personal capacity. That standard bars employees from personally soliciting funds from those persons known by the employee to be "prohibited sources" as defined in 5 CFR 2635.203(d), including, pursuant to 2635.203(d)(3), any person who "conducts activities regulated by the employee's agency." ("prohibited source" is also defined in subparagraphs (d)(1), (d)(2), (d)(4) and (d)(5) of § 2635.203 to include "any person who: (1) Is seeking official action by the employee's agency; (2) Does business or seeks to do business with the employee's agency; . . . (4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or (5) Is an organization a majority of whose members are described in paragraphs (d) (1) through (4) of this section.")

Because the FTC has enforcement authority over unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce, virtually all businesses are "prohibited sources" for FTC employees. The Commission has determined that given the breadth of this enforcement authority, the fundraising provision is unnecessarily restrictive for FTC employees. Accordingly, § 5701.102 provides that it shall be permissible for FTC employees to solicit funds or other support from a person who is a prohibited source only by virtue of the definition in 5 CFR 2635.203(d)(3), because the person is regulated by the FTC (provided that the other provision of 5 CFR 2635.808(c) continue to apply).

Employees of the FTC, however, will not be allowed to solicit contributions from a person known to be a "prohibited source" for the other defined reasons listed in 2635.203(d). Thus, an FTC employee may not engage in charitable fundraising from any person (including an organization a majority of whose members are such persons) seeking official action by the FTC, doing business with the FTC or having interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

III. Matters of Regulatory Procedure

Administrative Procedure Act

This rule amendment relates solely to agency management and personnel, and, thus, is not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2).

Regulatory Flexibility Act

The Federal Trade Commission has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

Paperwork Reduction Act

The Federal Trade Commission has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 5701

Conflicts of interests, Government employees.

By direction of the Commission.

Dated: July 28, 1998.

Donald S. Clark,

Secretary, Federal Trade Commission.

Approved: August 4, 1998.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Federal Trade Commission, with the concurrence of the Office of Government Ethics, amends 5 CFR part 5701 as follows:

PART 5701—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES FOR THE FEDERAL TRADE COMMISSION

1. The authority citation for part 5701 is revised to read as follows:

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 15 U.S.C. 46(g); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.803, 2635.808(c).

2. A new § 5701.102 is added to read as follows:

§ 5701.102 Fundraising activities

When engaging in personal fundraising, as described at 5 CFR 2635.808(c), an employee of the Federal Trade Commission may, notwithstanding the prohibition of § 2635.808(c)(1)(i), personally solicit funds from a person who is a prohibited source only under 5 CFR 2635.203(d)(3) (*i.e.*, because the person "conducts activities regulated by" the Commission). The other provisions of § 2635.808(c) continue to apply to any such personal fundraising.

Example 1: A Federal Trade Commission employee is president of the local branch of her college alumni association. The association is seeking contributions from local businesses. The employee may, during her off-duty hours, seek a contribution from a company that is regulated by the Commission, but not from one that she knows is currently under Commission investigation or is seeking official action by the Commission, does business or seeks to do business with the Commission, or has interests that may be substantially affected by the employee's job. While the Standards of Conduct provide that companies under the agency's enforcement authority generally are prohibited sources of an employee's fundraising in a personal capacity, § 5701.102 provides that employees of the FTC may seek charitable contributions from an entity that is a prohibited source only because its activities are subject to agency regulation.

[FR Doc. 98–21614 Filed 8–11–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–05–AD; Amendment 39–10704; AD 98–17–02]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model ASW–19 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Model ASW–19 sailplanes. This AD requires inspecting the tow release cable guide fittings for the correct mounting, and, if the fittings are mounted in the front of the bulkhead, moving the fitting to the rear of the bulkhead and adjusting the neutral travel of the cable. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent premature release of the tow cable during take-off, which could result in loss of the sailplane.

DATES: Effective September 26, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 26, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–05–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Alexander Schleicher Model ASW–19 sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 19, 1998 (63 FR 27514). The NPRM proposed to require inspecting the tow release cable guide fitting for the proper location on the bulkhead. If the cable guide release fitting is mounted on the front of the bulkhead, the NPRM proposed to require removing the cable guide release fitting, remounting it on the rear of the bulkhead, and adjusting the cable's neutral travel. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Alexander Schleicher Technical Note No. 18, dated July 3, 1984.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 100 sailplanes in the U.S. registry will be affected by this AD.

Accomplishing the inspection will take approximately 1 workhour per sailplane, at an average labor rate of approximately $60 an hour. Based on these figures, the total cost impact of the inspection on U.S. operators is estimated to be $6,000, or $60 per sailplane.

The modification will take approximately 2 workhours, at an average labor rate of $60 per hour. Parts cost approximately $20 per sailplane. Based on these figures, the total cost impact of the modification on U.S. operators is estimated to be $14,000, or $140 per sailplane.

Compliance Time of This AD

The compliance time of this AD is in calendar time instead of hours time-in-service (TIS). The average monthly usage of the affected sailplane ranges throughout the fleet. For example, one owner may operate the sailplane 25 hours TIS in one week, while another operator may operate the sailplane 25 hours TIS in one year. In order to ensure that all of the owners/operators of the affected sailplane have inspected the mount location of the tow release cable guide fitting within a reasonable amount of time, the FAA is utilizing a compliance time of 90 calendar days after the effective date of this AD.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–17–02 Alexander Schleicher Segelflugzeugbau: Amendment 39–10704; Docket No. 98–CE–05–AD.

Applicability: Model ASW–19 sailplanes, serial numbers 19001 through 19405, certificated in any category.

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

Compliance: Required within the next 90 days after the effective date of this AD, unless already accomplished.

To prevent premature release of the tow cable during take-off, which could result in loss of the sailplane, accomplish the following:

(a) Inspect the tow release cable guide fittings for a front or rear mount on the bulkhead of the sailplane in accordance with the Action section in Alexander Schleicher Technical Note (TN) No. 18, dated July 3, 1984.

(b) If the cable guide fitting is mounted on the front of the bulkhead, prior to further flight, remove the fitting and remount the cable guide fitting on the rear of the bulkhead in accordance with the Action section in Alexander Schleicher TN No. 18, dated July 3, 1984.

(c) After remounting the cable fitting, prior to further flight, check the neutral travel of the cable and adjust if necessary, in accordance with the Actions section in Alexander Schleicher TN No. 18, dated July 3, 1984.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) Questions or technical information related to Alexander Schleicher Technical Note No. 18, dated July 3, 1984, should be directed to Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, entral Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) The inspection and modification required by this AD shall be done in accordance with Alexander Schleicher Technical Note No. 18, dated July 3, 1984. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from to Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD No. 84–115, dated July 16, 1984.

(h) This amendment becomes effective on September 26, 1998.

Issued in Kansas City, Missouri, on August 4, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–21492 Filed 8–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–07–AD; Amendment 39–10705; AD 98–17–03]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Model DG–400 Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Glaser-Dirks Flugzeugbau GmbH (Glaser-Dirks) Model DG–400 gliders. This AD requires replacing the propeller shaft, the bearings, and the front drive belt retaining rings with ones of improved design. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent failure of the propeller shaft caused by an ineffective design, which could result in loss of glider propulsion during critical phases of flight.

DATES: Effective September 26, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 26, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Glaser-Dirks Flugzeugbau GmbH, Im Schollengarten 19–20, 7520 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–07–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426-6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Glaser-Dirks Model DG–400 gliders was published in the Federal Register as a notice of proposed rulemaking (NPRM) on May 21, 1998 (63 FR 27870). The NPRM proposed to require replacing the propeller shaft, the bearings, and the front drive belt retaining rings with parts of improved design. Accomplishment of the proposed action as specified in the NPRM would be in accordance with DG Flugzeugbau Technical Note No. 826/32, dated July 19, 1996, and DG Flugzeugbau WORKING INSTRUCTION No. 1 for TN 826/32, dated July, 1996.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 35 gliders in the U.S. registry will be affected by this AD, that it will take approximately 5 workhours per glider to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $460 per glider. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $26,600, or $760 per glider.

Compliance Time of this AD

The compliance time of this AD is in calendar time instead of hours time-in-service (TIS). The average monthly usage of the affected glider ranges throughout the fleet. For example, one owner may operate the glider 25 hours TIS in one week, while another operator may operate the glider 25 hours TIS in one year. In order to ensure that all of the owners/operators of the affected glider have replaced the propeller shaft, bearings and front drive belt retaining rings within a reasonable amount of time, the FAA is utilizing a compliance time of 4 calendar months after the effective date of this AD.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–17–03 Glaser-Dirks Flugzeugbau GMBH: Amendment 39–10705; Docket No. 98–CE–07–AD.

Applicability: Model DG–400 gliders, all serial numbers, certificated in any category.

Note 1: This AD applies to each glider identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 4 calendar months after the effective date of this AD, unless already accomplished.

To prevent failure of the propeller shaft caused by an ineffective design, which could result in loss of glider propulsion during critical phases of flight, accomplish the following:

(a) Replace the propeller shaft, the bearings, and the front drive belt retaining rings with parts of improved design in accordance with paragraph 2 of the Instructions section of DG Flugzeugbau Technical Note No. 826/32, dated July 19, 1996, and WORKING INSTRUCTION No. 1 for TN 826/32, dated July, 1996.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the glider to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to DG Flugzeugbau Technical Note No. 826/32, dated July 19, 1996, and DG Flugzeugbau WORKING INSTRUCTION No. 1 for TN 826/32, dated July, 1996, should be directed to DG Flugzeugbau GmbH, P.O. Box 4120, 76625 Bruchsal, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The replacements required by this AD shall be done in accordance with DG Flugzeugbau Technical Note No. 826/32, dated July 19, 1996, and DG Flugzeugbau WORKING INSTRUCTION No. 1 for TN 826/32, dated July, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from DG Flugzeugbau GmbH, P.O. Box 4120, 76625 Bruchsal, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 96–243 DG-Flugzeugbau, dated August 29, 1996.

(f) This amendment becomes effective on September 26, 1998.

Issued in Kansas City, Missouri, on August 4, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–21493 Filed 8–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–3]

Modification of Class E Airspace; Fortuna, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace area at Fortuna, CA. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 29 at Rohnerville Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Rohnerville Airport, Fortuna, CA.

EFFECTIVE DATE: 0901 UTC October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On July 13, 1998, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Fortuna, CA (63 FR 37510). Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS RWY 29 SIAP at Rohnerville Airport. This action will provide adequate controlled airspace for IFR operations at Rohnerville Airport, Fortuna, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace 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 Rule

This amendment to 14 CFR part 71 modifies the Class E airspace area at Fortuna, CA. The development of a GPS SIAP has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 29 SIAP at Rohnerville Airport, Fortuna, CA.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal 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; 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; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

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

September 16, 1997, is amended as follows:

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

* * * * *

AWP CA E5 Fortuna, CA [Revised]

Fortuna VORTAC
(lat 40°40'17" N, long. 124°14'04" W)
Rohnerville Airport, CA
(lat 40°33'14" N, long. 124°07'57" W)

That airspace extending upward from 700 feet above the surface and within a 6.5-mile radius of the Rohnerville Airport and within 1.8 miles each side of the Fortuna VORTAC 326° radial, extending from the VORTAC to 2 miles northwest of the VORTAC and within 1.8 miles northeast and 3.9 miles southwest of the Fortuna VORTAC 147° radial, extending from the Fortuna VORTAC to 3 miles southeast of the Fortuna VORTAC and within 2.2 miles southwest and 3 miles northeast of the 129° and 309° bearings from the Rohnerville Airport, extending from 6.5 miles northwest to 2.6 miles southeast of the airport and within 1.8 miles each side of the Fortuna VORTAC 034° radial, extending from the VORTAC to 9.6 miles northeast of the Fortuna VORTAC. That airspace extending upward from 1200 feet above the surface within 3.9 miles southeast and 8.7 miles northwest of the Fortuna VORTAC 229° radial, extending from the Fortuna VORTAC to 16.1 miles southwest of the Fortuna VORTAC and that airspace bounded by a line beginning at lat. 40°44'00" N, long. 124°33'00" W; to lat. 40°49'00" N, long. 124°30'00" W; to lat. 40°44'00" W, long. 124°30'00" W, thence to the point of beginning.

* * * * *

Sherry Avery,

Acting Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–21603 Filed 8–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AWP–26]

Establishment of Class E Airspace; Willits, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Willits, CA. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 16 and GPS RWY 34 SIAP at Ells Field-Willits Municipal Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations Ells Field-Willits Municipal Airport, Willits, CA.

EFFECTIVE DATE: 0901 UTC October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On June 17, 1998, the FAA proposed to amend 14 CFR part 71 by establishing a Class E airspace area at Willits, CA (63 FR 33021). Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS RWY 16 SIAP and GPS RWY 34 SIAP at Ells Field-Willits Municipal Airport. This action will provide adequate controlled airspace for IFR operations at Ells Field-Willits Municipal Airport, Willits, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace 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 Rule

This amendment to 14 CFR part 71 establishes a Class E airspace area at Willits, CA. The development of a GPS SIAP has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 16 SIAP and GPS RWY 34 SIAP at Ells Field-Willits Municipal Airport, Willits, CA.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; 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; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1. [Amended]

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

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

* * * * *

AWP CA E5 Willits, CA [New]

Ells Field-Willits Municipal Airport, AZ
(lat. 39°27'03"N, long. 123°22'12"W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Ells Field-Willits Municipal Airport and that airspace bounded by a line beginning at lat. 39°28'00"N, long. 123°30'15"W; lat. 39°44'30"N, long. 123°40'15"W; to lat. 39°49'45"W, long. 123°26'30"W; to lat. 39°32'11"N, long. 123°17'27"W, thence clockwise along the 6.3-mile radius of the Ells Field-Willits Municipal Airport, to the point of beginning.

* * * * *

Issued in Los Angeles, California, on July 31, 1998.

Sherry Avery,

Acting Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–21608 Filed 8–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 161

[Docket No. RM98–7–000; Order No. 599]

Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet

Issued July 30, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its Standards of Conduct regulations to require that interstate natural gas pipelines identify the names and addresses of their marketing affiliates on their web sites on the Internet and update the information within three business days of any change. Pipelines will also be required to state the dates the information was last updated.

EFFECTIVE DATE: September 11, 1998.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Stuart Fischer, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, Telephone: (202) 208–1033.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@FERC.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn System Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations in section 161.3 to require that interstate natural gas pipelines identify the names and addresses of their marketing affiliates on their web sites on the Internet. By doing so, the Commission will make it easier for the public to identify each interstate gas pipeline's current marketing affiliates. The new regulation is necessary to further assist the Commission in its oversight efforts as well as to permit shippers to effectively monitor transportation transactions between pipelines and their affiliated marketers.

II. Background

A. Regulatory History

The Commission, in Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*,[2] established rules intended to prevent interstate natural gas pipelines from providing preferential treatment to their marketing or brokering affiliates. Specifically, the Commission adopted Standards of Conduct (codified at Part 161 of the Commission's regulations)[3] and reporting requirements (codified in sections 161.3(h)(2) and 250.16).[4]

The Standards of Conduct govern the relationships between pipelines and their marketing affiliates. In general, they provide that pipelines and their marketing affiliates must function independently of each other. Pipelines cannot favor their marketing affiliates of providing transportation services or in providing transportation information or transportation discounts not available to non-affiliates.

However, there was no requirement in the Commission's regulations for pipelines to report the names of their marketing affiliates or changes in the status of marketing affiliates as they occur through, for example, acquisitions of new affiliates, or divestitures, consolidations, or name changes of prior affiliates.

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (188) (Order No. 497); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 91989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*. 57 FR 9 (January 2, 1992), FERC Stats, & Regs. 1991–1996 ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992), 57 FR 48978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994) (Order No. 566); Order No. 566–A, *order on rehearing*, 59 FR 42896 (October 20, 1994), FERC Stats. & Regs. 1991–1996 ¶ 31,002 (October 14, 1994) (Order No. 566–A); Order No. 566–B, *Order on rehearing*, 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[3] 18 CFR 161.3 (1998).

[4] 18 CFR 161.3(h)(2) and 250.16 (1998).

B. The NOPR

The May 13, 1998 Notice of Proposed Rulemaking (NOPR)[5] proposed to add section 161.3(l), which would require pipelines to post on their web sites on the Internet, the names and addresses of their marketing affiliates and to update this information within three business days of any change. A pipeline would also be required to state the date the information was last updated.

The NOPR stated that the proposed new regulation was necessary to further assist the Commission's oversight efforts as well as to enable the public to monitor pipeline-affiliate transactions. Marketing affiliations change rapidly in today's business climate. It is important for the public and the Commission to have a current picture of the pipelines' marketing affiliates to determine if pipelines are complying with the regulatory requirements.

The NOPR further stated that posting marketing affiliates' names and addresses on a pipeline's web site on the Internet would minimize the burden on pipelines and the Commission's administrative resources. The NOPR concluded that the burden on pipelines would be slight, as pipelines are already required to have web sites under Order No. 587–C and would only have to add the affiliate information.

C. Federal Register Notice and Comments

The NOPR was published in the **Federal Register** on May 19, 1998,[6] with comments due on or before June 19, 1998. The Commission received seven comments, which are discussed below. The commenters are: Shell Gas Pipeline Company (Shell); Michigan Gas Storage Company (MGSC); Williston Basin Interstate Pipeline Company (Williston); Great Lakes Gas Transmission Limited Partnership (Great Lakes); Public Utilities Commission of Ohio (PUCO); the Interstate Natural Gas Association of America (INGAA); and the Enron Interstate Pipelines (Enron).

III. Discussion

A. Scope of the Rule

1. Comments

Shell states that, because the NOPR proposes an amendment to Part 161 of the Commission's regulations, the rule should be "applicable only for pipelines and marketing affiliates to which this Part applies, as specified by section 161.1." Specifically, Shell asks for clarification that the rule would not apply to interstate gas pipelines that do not engage in transportation transactions with their marketing affiliates.

Great Lakes comments that requiring a pipeline to list marketing affiliates that it does not conduct business with places an unnecessary burden on the pipeline to monitor the actions of its parents and subsidiaries, and adds to the burden on the Commission and on non-affiliated shippers to monitor companies that may never conduct transactions with the pipeline subject to Commission oversight.

2. Commission Ruling

Section 161.1 of the Commission's regulations, 18 CFR 161.1 (1998), limits the applicability of the standards of conduct to any pipeline that has transportation transactions with its marketing or brokering affiliate.[7] The new Standard of Conduct is only applicable to interstate natural gas pipelines that meet the criteria of section 161.1. Thus, the posting requirements would not apply to interstate natural gas pipelines that do not have transportation transactions with their marketing affiliates. Nor does the name and address of a marketing affiliate have to be posted unless the marketing affiliate has transportation transactions on the affiliated pipeline. We note that a marketing affiliate need not be a shipper to have a transportation transaction with its affiliated pipeline.[8]

B. Posting Requirements

All of the commenters either supported or did not oppose the requirements that interstate natural gas pipelines identify the names and addresses of their marketing affiliates on their web sites and update the information.

Enron states that the posting requirement provides an excellent opportunity to update the Commission's regulations to take advantage of advances in information technology.

PUCO states that it believes that the proposed rule will assist Commission oversight efforts to ensure that pipelines adhere to the standards of conduct. It further comments that the posting requirement will ensure the availability of timely information, which is important in today's environment of increasing and numerous acquisitions and mergers. PUCO states that requiring the disclosure of affiliated marketer information on each pipeline's web site will not impose a significant additional burden on the pipeline, as the Commission has previously required that each pipeline post information on a web site. Finally, PUCO states that the availability of the names and addresses of pipeline marketing affiliates will be important to its staff for obtaining necessary and timely information.

Great Lakes states that it supports the Commission's effort to utilize Internet technology to provide timely and relevant information in a convenient way.

C. Timing of Postings

1. Comments

Several commenters opposed the proposal to update postings of the names and addresses of marketing affiliates within three business days of a change in the information. Williston commented that it did not oppose the three business day deadline, but would be opposed to a shorter period.

Enron and MGSC raised specific concerns that a three day period for updates would be burdensome.[9] Enron contends that a three day reporting deadline will add a burden on pipeline staff and resources without providing any additional protection against discrimination. Enron states that the Commission does not fully appreciate the resources that would be required for companies like Enron to identify and post name changes within three days. It states that most energy companies today are diverse organizations with affiliates engaged in many different enterprises. By way of example, Enron states that in 1997 its corporate family had 109 incorporations, 101 acquisitions, 43 name changes and six dissolutions, and that the majority of the companies involved are not marketing affiliates.

Enron contends that, to ensure compliance with the proposed rule, pipelines must make a daily review of a complete roster of affiliates, and that jointly-owned or partnership pipelines have the additional task of reviewing records of both operating and non-operating companies or partners. Enron states that only by reviewing a comprehensive affiliate list, together with information on whether an affiliate buys or sells or transports gas on the affiliated pipeline, can a pipeline determine if a change must be posted.

MGSC comments that no showing has been made in the NOPR that the posting

[5] 83 FERC ¶ 61,146 (1998).

[6] 63 Fed. Reg. 27526 (May 19, 1998).

[7] Section 161.1 identifies transportation under Part 157, Subpart A (Natural Gas Act certificate) and Part 284, Subparts B (Natural Gas Policy Act) or G (blanket certificate under the Natural Gas Act).

[8] *See* Order No. 566, FERC Stats. & Regs. 1991–1996 at 31,068–69 and Order No. 566–A, FERC Stats. & Regs. 1991–1996 at 31,126. For example, a marketing affiliate may act as an agent in a transaction by arranging for gas supplies and/or transportation for a shipper on the related pipeline.

[9] In their comments, Enron, MGSC and Great Lakes referred to the update period as three days, not three business days as stated in the NOPR.

needs to be made as quickly as three days or 24 hours.[10] MGSC states that pipelines do not have contemporaneous knowledge of their marketing affiliates' business activities.

MGSC further comments that "marketing affiliates," as defined in section 161.2(a) of the Commission's regulations, can be distantly related to a pipeline.[11] MGSC states that its first marketing affiliate was a partnership, a partner of which is a subsidiary of MGSC's parent. MGSC states that its parent has one representative on the management committee of the partnership, which is primarily engaged in generating electricity. MGSC asserts that it is not in a position to post or know of changes in the affiliate's activities and status on a day-to-day basis.

Both Enron and MGSC contend that a three-day update requirement would lead to greater communications between pipelines and their marketing affiliates. Enron states that the imposition of a 24-hour or three-day update requirement would necessitate increased day-to-day communications between the pipeline and the affiliate. MGSC states that, under the proposed posting requirements, pipelines would be required to keep closer contact with their marketing affiliates' plans and activities. MGSC contends that this would be inconsistent with the prohibitions against inappropriate entanglements between pipelines and marketing affiliates.

INGAA proposes an alternative to the NOPR's three business day update requirement, which was supported in the comments by Enron and Great Lakes. INGAA proposes that pipelines report changes in marketing affiliate names and addresses contemporaneously with any new transportation transactions or discounts with their marketing affiliates. Citing language from Order No. 497, INGAA argues that if a marketing affiliate has no transactions on its affiliated pipeline, then there is no possibility for abuse.[12]

Enron contends that INGAA's suggestion that pipelines post names contemporaneously with discounts or new transactions meets the objective to protect against discrimination without requiring a lot of time searching corporate records. Enron further argues that, unless the pipeline enters into a new transaction or discount, the pipeline has no immediate reason to know or anticipate affiliate name changes.

Great Lakes supports INGAA's comments and states that the Commission's goal to enable it and nonaffiliated shippers to efficiently monitor pipeline-affiliate transactions can be achieved by more limited requirements than those described in the NOPR. Great Lakes suggests that pipelines should report marketing affiliate names and addresses contemporaneously with any regulated transaction that the affiliate conducts with the pipeline.

Enron, Great Lakes and MGSC also suggested alternative time periods for updating changes in the names and addresses of marketing affiliates. Enron asks that, if the Commission does not accept INGAA's proposal, it adopt a 30-day deadline to update marketing affiliate names. Great Lakes proposes that a pipeline should be responsible for updating its posting of the names and addresses of its marketing affiliates only after it has become aware of changes, regardless of the actual effective dates of the changes. MGSC asserts that, because marketing affiliates are customers of the pipelines, pipelines will learn of their affiliates' changes in names and addresses in the ordinary course of business. MGSC contends that the NOPR did not present any reason for needing, or even wanting, such status changes posted on a more expedited basis.

Finally, two commenters, Enron and Williston, specifically addressed the 24-hour update deadline proposed in the concurrence to the NOPR. Enron contends that the examples in the concurrence of 24-hour reporting deadlines are not comparable to the updates proposed in the NOPR. Enron contends that the 24-hour deadlines for electric utilities to report emergency deviations on the OASIS and for hydroelectric power licensees to report deviations from state water quality standards involve exception-based reporting. In contrast, Enron states that keeping track of changes to marketing affiliates would require a continuous review of corporate organizational records. Enron further states that the 24-hour posting deadline for discounts comports with INGAA's suggestion to post name changes concurrently with posting discounts to the marketing affiliate.

Williston states that requiring updates within a shorter time frame than three business days would increase the administrative burden associated with monitoring affiliate names and addresses and create havoc if changes were received on short notice and the necessary administrative personnel to post such information were unavailable. Williston states that employees are not informed instantaneously of companies that the pipeline has purchased. It asserts that closings take place before the information is disseminated to pipeline employees, making it difficult to ensure that the marketing affiliate information is accurate in less than three business days. Williston contends that the three business day requirement for posting changes to marketing affiliate names and addresses affords the Commission and the public adequate notice of any changes without causing the problems that would be associated with a shorter time frame.

2. Commission Ruling

The Commission is retaining the three business day time period after a change occurs in which a pipeline must update the names and addresses of its marketing affiliates.

As discussed earlier, a pipeline must only post and update the names and addresses of marketing affiliates that are involved in transportation transactions on its pipeline facilities. Such transactions are subject to the marketing affiliate rules. Consequently, it is important that the pipeline, the marketing affiliate, the Commission and the public know of the affiliate relationship when such transactions occur. Pipelines have an obligation to have up-to-date information on the identities of their marketing affiliates, and to communicate that information to their employees, to enable the employees to observe the marketing affiliate rules. For example, under section 161.3(f), to the extent a pipeline provides to a marketing affiliate information related to the transportation of natural gas, it must provide that information contemporaneously to all potential shippers, affiliated and non-affiliated, on its system.[13] Pipeline employees must know the identities of relevant marketing affiliates to comply with that rule.

We believe that three business days is a sufficient and reasonable period of time in which to provide the Commission and non-affiliated shippers with a meaningful and timely opportunity to monitor pipelines' compliance with the marketing affiliate rules. As Enron points out, the pace of markets today is brisk. As a result,

[10] In a concurring opinion to the NOPR, Commissioner Massey advocated a 24-hour period after a change occurs as a deadline for posting updated information.

[11] Section 161.2(a) of the Commission's regulations states that "affiliate," when used in reference to any person in Part 161 or section 250.16, means another person which controls, is controlled by, or is under common control with, such person. 18 CFR 161.2(a) (1998).

[12] Order No. 497, FERC Stats. & Regs. 1986–1990 at 31,131.

[13] 18 CFR 161.3(f) (1998).

unduly discriminatory actions must be corrected quickly if the correction is to be meaningful. A deadline of three business days to update changes in the names and addresses of marketing affiliates should provide enough time for pipelines to obtain information about changes and to update their web sites.

Williston does not object to the three business day requirement.[14] Only Enron and MGSC raised specific arguments that three business days is an inadequate period of time in which to update changes in the names and addresses of marketing affiliates.[15] Enron argues that it would have to conduct a daily review of all of its corporate affiliations because of the numerous changes that occur. However, because pipelines must post only the names and addresses of marketing affiliates that have transportation transactions with their affiliated pipelines, Enron should not have to conduct an involved search to comply with this Final Rule. Moreover, because pipelines are already required to know the identities of their marketing affiliates so that they can comply with the preexisting Standards of Conduct, we are unpersuaded that the difficulty cited by MGSC concerning locating marketing affiliates associated with a partnership is a legitimate reason for requiring a longer update period than three business days.

None of the alternative proposals made by the commenters would further the purpose of enabling the Commission and non-affiliated shippers to monitor transactions between a pipeline and its marketing affiliates in a timely manner. INGAA proposed that a pipeline report changes in a marketing affiliate's name or addresses contemporaneously with any new transportation transaction or new discount with the marketing affiliate. However, INGAA's proposal is inadequate for monitoring all types of conduct covered by the Standards of Conduct in Part 161 because it excludes existing transactions involving newly acquired or renamed affiliates. For example, section 161.3(c) prohibits preferences to affiliates in scheduling, balancing and curtailments, all matters that apply to existing transactions. Further, pipelines that have existing transportation agreements with marketing affiliates may not disclose non-affiliated shipper information covered by section 161.3(e) or selectively disclose transportation information under section 161.3(f). Accordingly, INGAA's proposal would leave an information gap because marketing affiliates in existing transactions would not be covered.

We also reject the alternate posting time periods proposed by MGSC, Great Lakes and Enron. Choosing an amorphous standard such as when a pipeline learns of the change in the ordinary course of business, as suggested by MGSC and Great Lakes, or a 30-day deadline, as proposed by Enron, would defeat the purpose of making up-to-date information concerning pipelines' transactions with their marketing affiliates publicly available.

Finally, we are unconvinced that, as suggested by Enron and MGSC, keeping track of changes in the names and addresses of marketing affiliates is inconsistent with the principles of separation between pipelines and their marketing affiliates. The Standards of Conduct do not prohibit transactions between a pipeline and its marketing affiliates but place restrictions on those transactions to prevent pipelines from providing undue preferences to their affiliates. To ensure compliance with the marketing affiliate regulations, pipelines must be aware of newly acquired marketing affiliates and changes in status of preexisting marketing affiliates.

In conclusion, we find that three business days is an adequate and reasonable amount of time for a pipeline to update on its web site changes in the names and addresses of its marketing affiliates.

D. Effect on Other Regulatory Requirements

INGAA asks that the Commission relieve pipelines from the "redundant" requirement to update their tariffs to reflect marketing affiliate name and address changes. However, there was no prior requirement in the Commission's regulations that pipelines report the names and addresses of their marketing affiliates in their tariffs.

There is a requirement, in section 250.16, that pipelines include in tariff provisions a complete list of operating personnel and facilities shared by the pipeline and its marketing affiliates, and the procedures used to address and resolve complaints by shippers and potential shippers. 18 CFR 250.16 (1998). This Final Rule does not duplicate the requirements of section 250.16 and is not redundant.

Great Lakes asks that the Commission eliminate the requirement that pipelines list all of their affiliated entities, including marketing affiliates, in their annual Form 2 filings. Great Lakes argues that the annual data in the Form 2 does not keep abreast of changes in affiliate status and does not distinguish marketing or brokering affiliates.

We reject Great Lakes's request. The purpose of the Form 2 is to provide adequate financial and statistical data on an annual basis to allow the Commission, other government agencies and the public to adequately assess a pipeline's operations and financial condition. To this end, the requirement to list affiliates in the Form 2 includes all affiliates, not just marketing affiliates. The Form 2 data serve a valid purpose that the information required by this Final Rule does not duplicate.

E. Waivers

The NOPR did not address waivers of the requirements that a pipeline post and update the names and addresses of its marketing affiliates on its web site. At the time the Commission issued the NOPR, it had not granted waivers of the GISB web site requirements of Order No. 587, *et seq.*,[16] that extended beyond June 1, 1998. However, the Commission recently granted several waivers extending beyond that date, including waivers to pipelines that have filed Standards of Conduct.[17]

No commenter raised the waiver issue. Nevertheless, we do not want to force pipelines that received waivers of the Order No. 587 requirements to have to seek additional waivers of the requirements of this Final Rule. All of the pipelines with a waiver of the Order No. 587 requirements for posting information on a web site use either an electronic bulletin board (EBB) or some

[14] Because the Commission is retaining the three business day update period from the NOPR, we need not address Williston's and Enron's comments concerning an update period of less than three business days.

[15] Great Lakes generally argued that it is not in a position to ensure its compliance with the requirement, but did not provide details. INGAA provided an alternative proposal, but did not address why it believed that the three business day requirement would be inadequate.

[16] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,038 (Jul. 17, 1996); Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,046 (Jan. 30, 1997); Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,050 (Mar. 4, 1997); Order No. 587–D, *order denying rehearing*, 62 FR 19921 (Apr. 24, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,052 (Apr. 18, 1997); Order No. 587–E, *order denying rehearing and request for waiver*, 62 FR 25842 (May 12, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,053 (May 6, 1997); Order No. 587–G, 63 FR 20072 (April 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 (April 16, 1998); and Order No. 587–H, 63 FR 39509 (July 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ _____ (July 15, 1998).

[17] *E.g.*, KO Transmission Company (Docket No. RP98–200–000), Midcoast Interstate Transmission Company (Docket No. RP97–278–000).

other means approved by the Commission to comply with other Standard of Conduct requirements (*e.g.*, section 161.3(h)).[18] Such pipelines can comply with the requirements of this Final Rule during the waiver period by identifying the names and addresses of their marketing affiliates on their EBBs, or if the Commission has granted the pipeline a waiver of the EBB requirements, through the facility approved by the Commission in lieu of an EBB.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA) [19] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. In the NOPR, the Commission concluded that the proposed rule would benefit small entities by making it easier for small customers to monitor pipelines' transactions with their marketing affiliates. No comments were submitted alleging any significant economic effect on small entities. Accordingly, pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

V. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[20] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[21] This Final Rule falls within the categorical exclusion which specifies that information gathering, analysis, and dissemination are not major federal actions that have a significant effect on the human environment.[22] The Final Rule also falls under the categorical exclusion for rules concerning the sale, exchange, and transportation of natural gas that requires no construction of facilities.[23] Thus, neither an environmental impact statement nor an environmental assessment is required.

VI. Information Collection Statement and Reporting Requirements

The OMB regulations require OMB to approve certain reporting and record keeping (collections of information) imposed by agency rule.[24] OMB has approved the NOPR without comment. The Final Rule will affect one existing data collection, FERC–592.

Respondents subject to the filing requirements of this Final Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

Title: FERC–592, Marketing Affiliates of Interstate Pipelines.

Action: Proposed Data Collection, OMB Control No. 1902–0157.

Respondents: Interstate natural gas pipelines (Business or other for-profit, including small businesses).

Frequency of Responses: On Occasion.

Necessity of Information: The Final Rule revises the filing requirements contained in 18 CFR Part 161.3 for Standards of Conduct for interstate natural gas pipelines. The pipelines are being required to identify the names and addresses of their marketing affiliates on their web sites on the Internet. The new requirements are necessary for the Commission's oversight activities and for the public to be able to monitor pipeline-affiliate transactions. This additional information provides the Commission and the public with current information on marketing affiliates to make a determination that pipelines are in compliance with regulatory requirements.

The Commission received seven comments on its NOPR but none on its reporting or cost estimates. The Commission's responses to the comments are addressed in Part III of this Final Rule. The Commission is submitting a copy of this Final Rule to OMB for information purposes because the Final Rule is not significantly different from the NOPR.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, (202) 208–1415 or send comments to the Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA) (Attention: Desk Officer for the Federal Energy Regulatory Commission (202) 395–3087, fax: (202) 395–7285).]

VII. Effective Date and Congressional Notification

This Final Rule will take effect on September 11, 1998. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[25] The Commission will submit the rule to both houses of Congress and the Comptroller General prior to its publication in the **Federal Register.**

List of Subjects in 18 CFR Part 161

Natural gas, Reporting and recordkeeping requirements.

By the Commission.

David P. Boergers,

Acting Secretary.

In consideration of the foregoing, the Commission amends Part 161, Chapter I, Title 18 of the *Code of Federal Regulations,* as set forth below.

PART 161—STANDARDS OF CONDUCT FOR INTERSTATE PIPELINES WITH MARKETING AFFILIATES

1. The authority citation for Part 161 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. In § 161.3, paragraph (l) is added to read as follows:

§ 161.3 Standards of Conduct.

* * * * *

(l) A pipeline must post the names and addresses of its marketing affiliates on its web site on the public Internet and update the information within three business days of any change. A pipeline must also state the date the information was last updated. Postings must conform with the requirements of § 284.10 of this chapter.

[FR Doc. 98–21573 Filed 8–11–98; 8:45 am]

BILLING CODE 6717–01–P

[18] For example, the Commission approved KO Transmission Company's use of a telephone recorded message instead of an EBB. KO Transmission Company, 74 FERC ¶ 61,101 at 61,311 (1996).

[19] 5 U.S.C. 601–612 (1996).

[20] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Statutes and Regulations, Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[21] 18 CFR 380.4 (1998).

[22] 18 CFR 380.4(a)(5) (1998).

[23] 18 CFR 380.4(a)(27) (1998).

[24] 5 CFR 1320.11 (1998).

[25] 5 U.S.C. 804(2).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–98–048]

Drawbridge Operating Regulation; Ouachita River, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulation.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad vertical lift bridge across the Ouachita River, mile 114.3, near Riverton, Caldwell Parish, Louisiana. This deviation allows the Union Pacific Railroad to close the bridge to navigation from 7 a.m. until 5 p.m. on Tuesday, August 25, 1998. This temporary deviation is issued to allow for the replacement of rail expansion joints on the vertical life span.

DATES: This deviation is effective from 7 a.m. until 5 p.m. on Tuesday, August 25, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad vertical lift span bridge across the Ouachita River near Riverton, Caldwell Parish, Louisiana has a vertical clearance of 7 feet above mean high water, elevation 71 feet Mean Sea Level, in the closed-to-navigation position and 57 feet in the open to navigation position. Navigation on the waterway consists primarily of tugs with tows and occasional recreational craft. Presently, the draw opens on signal for the passage of vessels.

The Union Pacific Railroad requested a temporary deviation from the normal operation of the bridge in order to do maintenance work on the bridge. The work consists of replacing the rail expansion joints on the bridge. These joints are on the opposite end of the bridge from those that were replaced in June of this year. This work is essential for the continued safe operation of the vertical lift span.

The District Commander has, therefore, issued a deviation from the regulations in 33 CFR 117.5 authorizing the Union Pacific Railroad vertical lift span bridge across the Ouachita River, Louisiana to remain in the closed-to-navigation position from 7 a.m. until 5 p.m. on Tuesday, August 25, 1998.

Dated: August 4, 1998.

Paul J. Pluta,

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

[FR Doc. 98–21597 Filed 8–11–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MN59–01–7284a; FRL–6139–2]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Minnesota; Municipal Waste Combustor State Plan Submittal

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Minnesota State Plan submittal for implementing the Municipal Waste Combustor (MWC) Emission Guidelines. The State's plan was submitted to EPA on April 28, 1998. This submittal was made to satisfy the requirement of the 1990 Clean Air Act (CAA) that all MWCs with the capacity to combust greater than 250 tons per day (tpd) of Municipal Solid Waste (MSW) adopt the emission standards as published in the **Federal Register** on December 19, 1995 and in a subsequent **Federal Register** on August 27, 1997. The State's submittal was made in accordance with the requirements for adoption and submittal of State Plans for designated facilities in 40 CFR part 60, subpart B. The EPA finds that Minnesota's Plan for existing MWCs adequately addresses all of the Federal requirements applicable to such plans. If adverse comments are received on this action, the EPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule, which is being published in the proposed rules section of this **Federal Register**. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time. This approval makes the State's plan federally enforceable.

DATES: The "direct final" is effective on October 13, 1998, unless EPA receives adverse or critical comments by September 11, 1998. If adverse comment is received, EPA will publish a timely withdrawal and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State Plan submittal and EPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. EPA, Region 5, Chicago, Illinois 60604, (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. Background

On December 19, 1995 (60 FR 65382), the EPA adopted Emission Guidelines (EG) for existing MWC sources and New Source Performance Standards for new sources. The EG was amended on August 25, 1997 to address the vacature of the portion of the EG that applied to MWCs that combust between 40 and 250 tons of MSW per day. The Clean Air Act requires that State regulatory agencies implement the EG according to a State Plan developed under sections 111(d) and 129 of the CAA.

On April 28, 1998, the State of Minnesota, through the Minnesota Pollution Control Agency (MPCA), submitted its "Section 111(d) Plan for Implementing the Large Municipal Waste Combustor Emission Guidelines" to satisfy the section 111(d) and section 129 requirements for MWCs. The following provides a brief discussion of the requirements for an approvable State Plan for existing large MWCs, as well as EPA's review of Minnesota's submittal in regard to those requirements. More detailed information on the requirements for an approvable plan and Minnesota's submittal can be found in the Technical Support Document (TSD) accompanying this notice, which is available upon request.

II. Evaluation of Minnesota's Large MWC Plan

The following is EPA's review of Minnesota's § 111(d)/129 plan for existing large MWCs against the requirements of 40 CFR part 60, subpart B and subpart Cb:

A. Demonstration of Legal Authority

The State must submit a demonstration of the State's legal authority to carry out the § 111(d)/129 plan as submitted.

The MPCA submitted, as Attachment A to the § 111(d)/129 plan, a letter from Assistant Attorney General, Kathleen Winters, which describes Minnesota's authority to carry out and enforce the plan. The statutes cited in the letter were included as Attachment E to the § 111(d)/129 plan.

The EPA has reviewed the State's demonstration and determined that the MPCA has the proper authority to adopt and implement the § 111(d)/129 plan in accordance with 40 CFR 60.26.

B. Criteria for an Adequate Enforceable Mechanism

In its submittal a State must identify the enforceable State mechanisms selected by the State for implementing the EG. The MPCA has chosen a combination of State rules, Title V permits, and Administrative Orders as the enforceable mechanisms to implement the MWC EG. The MPCA has adopted State rules as the cornerstone of their State plan. The State rules contain the standards that will apply to the large MWCs in the State. The State rules also contain the December 19, 2000 date by which all large MWCs must be in compliance with the standards in the rules. Outside of the State rules are the individual source compliance dates and increments of progress leading to final compliance with the standards.

The EPA's guidance for implementing the MWC EG states that if a mechanism different from a State rule is used to implement the EG, the State must provide documentation on how the selected mechanisms will ensure that the emission standards for the pollutants regulated by § 129, and attach a copy of the enforceable mechanism.

The MPCA has included, as Attachment B to its State Plan, a letter addressing Minnesota's legal authority to use permits issued by the MPCA (including Title V permits) as the legal enforceable mechanism to implement the EG. The EPA has reviewed this letter and found that Minnesota has the legal authority to use Title V permits and Administrative Orders to implement the EG.

C. Source Inventory and Emission Inventory

An inventory of MWC plants/units in the State affected by the EG, including MWC units that have ceased operation and are not partially or totally dismantled, must be submitted. An inventory of emissions from these MWC units in the State must also be submitted. Additionally, the EG requires States to submit dioxin test data for those units with compliance schedules that extend beyond one year later than approval of the State Plan. The dioxin test data for those sources with schedules longer than one year must be from tests conducted during or after 1990.

The MPCA has attached a list of the affected MWC facilities and units that are regulated by the EG (see § 111(d)/129 Plan Attachment F). This attachment also contains the units' emission inventory. Most data provided are actual emissions from the calendar year 1995. Where actual emission data were not available, AP–42 emission factors were used.

Of the four facilities that will be affected by the State Plan, three have compliance schedules that will extend beyond one year of the approval of the State Plan. The MPCA has included in the State Plan, as Attachment G, the dioxin test data for all of these sources. The test data submitted are from tests conducted after 1990.

D. Emission Limitations

The State Plan must include emission limitations for MWC units that are at least as protective as those found in the EG.

The emission limits for the nine MWC pollutants described in subpart Cb are found in Minn. R. 7011.1227 and 7011.1228. The emission limits are expressed in dimensions identical to those found in the Emission Guidelines except for particulate matter.

What the MPCA refers to as "front half particulate matter" is what EPA terms "particulate matter." Minnesota's front half particulate matter standard is equivalent to EPA's particulate matter standard.

In addition to emission limits for the nine pollutants regulated by the EG, § 111(d)/129 State Plans must also include MWC operating practices (§ 60.34b(b)), operator training and certification requirements (§ 60.35b), fugitive ash visible emission standards (§ 60.36b), and air curtain incinerator opacity requirements (§ 60.37b).

The requirements of § 60.34(b) are fulfilled by Minn. R. 7011.1240, subp. 5; entitled "Range of Operation" and by Minn. R. 7011.1240, subp. 2, entitled, "Particulate matter control device operating temperature."

The requirements of § 60.35b allow a State to develop its own operator and training certification program. The MPCA has developed its own operator training and certification program and has submitted it as part of the State Plan. This program is found in Minnesota Rules:

7011.1275 Personnel Training
7011.1280 Operator Certification
7011.1281 Full Operator Certification
7011.1282 Certified Municipal Waste Combustor Examiner Certificate
7011.1283 Duties of a Certified Municipal Waste Combustor Examiner
7011.1284 Fully Certified Operator

The requirements of § 60.36b are fulfilled by Minn. R. 7011.1225, subp. 1(B).

The MPCA has made a negative declaration for air curtain incinerators. This negative declaration obviates the need for the State to set an opacity limit for these sources.

E. Testing, Monitoring, Recordkeeping and Reporting

The § 111(d)/129 State Plan must include requirements for the ongoing testing, monitoring, recordkeeping, and reporting provisions from the EG. These include, in particular:

- The performance testing methods listed in § 60.58b of Subpart Eb (40 CFR Part 60, Subpart Cb, § 60.38b), and
- The reporting and recordkeeping provisions listed in § 60.59b of Subpart Eb (40 CFR Part 60, Subpart Cb, § 60.39b).

The performance testing requirements listed in § 60.38b are met by the following in Minnesota Rules:

7011.1260 Continuous Monitoring
7011.1265 Required Performance Tests, Methods, and Procedures
7011.1270 Performance Test, Waste Composition Study and Ash Sampling Frequency

Recordkeeping and reporting requirements are found in Minn. R. 7011.1285: Operating Records and Reports.

F. Compliance Schedules

Units that will need to be retrofitted to meet the emission limits in a State Plan, must submit compliance schedules. Retrofit schedules can extend up to three years after the § 111(d)/129 State Plan approval, but no retrofit schedule can extend beyond December 19, 2000. Units that commenced construction after June 26, 1987 must comply with the dioxin/furan and mercury emission limits within one year of plan approval or permit modification.

The § 111(d)/129 State Plan must also specify legally enforceable increments of progress toward compliance for MWC units that have compliance or retrofit schedules that extend past one year beyond approval of the § 111(d)/129 State Plan.

All MWC units constructed after June 26, 1987 are currently equipped with scrubbing systems and are allowed up to one year to retrofit activated carbon injection for enhanced scrubber

performance in order to control mercury and dioxin. For other pollutants, such as NOx and CO, the retrofit schedule can extend up to three years after State Plan approval or December 19, 2000, whichever is earlier.

Compliance schedules for MWC units with compliance dates that extend more than one year beyond the date of State Plan approval must include legally enforceable increments of progress toward compliance. Each increment of progress must have an enforceable compliance date in the § 111(d)/129 State Plan.

The *minimum* five increments of progress required by Section 60.21(h) of Subpart B for each MWC unit within a state are as follows:

1. Submitting a final control plan.
2. Awarding contracts for control systems or process modifications or orders for purchase of components;
3. Initiating on-site construction or installation of the air pollution control device(s) or process changes;
4. Completing on-site construction or installation of control equipment or process changes;
5. Final compliance.

Minn. R. 7011.1215 subp. 5, requires sources to submit compliance plans that contain increments of progress. Minn. R. 7011.1215 subp. 5, also requires that compliance with the standards shall be no later than December 19, 2000. There are three facilities that will require compliance schedules beyond one year after State Plan approval. The enforceable increments of progress for these sources have been submitted as Attachment C of the State Plan. The requirement that sources constructed after June 26, 1987 are allowed up to one year to retrofit activated carbon injection for enhanced scrubber performance in order to control mercury and dioxin does not apply in Minnesota because all of the large MWC units in that State commenced construction prior to that date.

G. Public Hearings

As with State Implementation Plans for criteria pollutants, EPA regulations in 40 CFR Part 60, subpart B, make it clear that citizen input on § 111(d)/129 State Plans is encouraged in order to help define appropriate emission standards and retrofit schedules. Under Subpart B, the minimum public participation requirements are as follows:

1. Reasonable notice of opportunity for one or more public hearing(s) at least 30 days before the hearing.
2. One or more public hearing(s) on the § 111(d)/129 State Plan (or revision) conducted at location(s) within the State, if requested.
3. Date, time, and place of hearing(s) prominently advertised in each region affected.
4. Availability of draft Section 111(d)/129 State Plan for public inspection in at least one location in each region to which it will apply.
5. Notice of hearing provided to:

a. EPA Regional Administrator
b. Local affected agencies
c. Other states affected

6. Certification that the public hearing, if held, was conducted in accordance with Subpart B and State procedures.
7. Hearing records must be retained for a minimum of two years. These records must include the list of commentors, their affiliation, summary of each presentation and/or comments submitted, and the State's responses to those comments.

The amendments to incorporate the EG requirements into the State's existing combustor rules were placed on public notice in the *State Register* on November 17, 1997. A copy of the notice was mailed to 1380 people, and of those, 193 were additionally mailed a copy of the rule. A public hearing was held on January 21, 1998, at the MPCA offices in St. Paul, MN. The public hearing was presided over by Judge Allan Klein.

The Title V permit for UPA–Elk River facility was placed on public notice on February 12, 1998. The comment period ended on March 13, 1998.

The Administrative Order for the NSP facility was placed on public notice on February 23, 1998 and the comment period ended on March 25, 1998.

Each component of the State's submittal (the rules, Title V permit and Administrative Order) was public noticed at some time. Each of the public notices stated that it would be submitted to EPA as part of Minnesota's 111(d) plan. Each public notice also stated that not only would that specific document be submitted but the other components would be as well.

H. Submittal of State Progress Reports to EPA

States must commit in the § 111(d)/129 State Plan to submit annual reports on progress in the implementation of the EG to the EPA.

In its submittal, the MPCA has committed to submitting annual implementation progress reports to the EPA beginning one year after EPA approves the plan.

III. Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving Minnesota's April 28, 1998 submittal of its § 111(d)/129 plan for existing large MWCs. As provided by 40 CFR 60.28(c), any revisions to Minnesota's § 111(d)/129 plan or associated regulations will not be considered part of the applicable plan until submitted by the State in accordance with 40 CFR 60.28 (a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State Plan should adverse or critical comments be filed. This action will be effective October 13, 1998 unless, by September 11, 1998, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a timely withdrawal in the **Federal Register.** All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on October 13, 1998.

IV. Administrative

A. Executive Order 12866

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

B. Executive Order 13045

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

C. 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 direct final rule will not have a significant impact on a substantial number of small entities because State Plan approvals under § 111(d) of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal State Plan approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under State law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

E. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Minnesota's audit privilege and penalty immunity law Sections 114C.20 to 114C.31 of the Minnesota Statute or its impact upon any approved provision in the State Plan. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Act program resulting from the effect of Minnesota's audit privilege and immunity law. A State audit privilege and immunity law can affect only State enforcement and cannot have any impact on Federal enforcement authorities. EPA may at any time invoke its authority under the Act including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the State plan, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by a State audit privilege or immunity law.

F. Submission to Congress and the General Accounting Office

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

G. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Municipal solid waste, Reporting and recordkeeping requirements.

Dated: July 23, 1998.

Robert Springer,

Acting Regional Administrator, Region V.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. A new center heading and §§ 62.5870, 62.5871, and 62.5872 are added to read as follows:

Subpart Y—Minnesota

Existing Large Municipal Waste Combustors

§ 62.5870 Identification of plan.

"Section 111(d) Plan for Implementing the Large Municipal Waste Combustor Emission Guidelines," submitted by the State on April 28, 1998. The rules being approved as part of this plan are being approved for their applicability to large municipal waste combustors in Minnesota and should apply only to these sources.

§ 62.5871 Identification of sources.

The plan applies to all existing municipal waste combustor units with the design capacity of $93.75 * 10^6$ Btu/hr or more. This is the same as having an applicability threshold of the capacity to process 250 tons per day or more of municipal solid waste.

§ 62.5872 Effective date.

The effective date of the plan for existing large waste combustors is October 13, 1998.

[FR Doc. 98–21678 Filed 8–11–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300684; FRL–6017–6]

RIN 2070–78AB

Potassium Dihydrogen Phosphate; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of potassium dihydrogen phosphate (KH_2PO_4) when used as a fungicide in or on all food commodities. EPA initiated this regulation under the Federal Food, Drug, and Cosmetic Act as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170). This regulation eliminates the need to establish a maximum permissible level for residues of potassium dihydrogen phosphate, when applied in accordance with good agricultural practices.

DATES: This regulation is effective August 12, 1998. Objections and requests for hearings must be received by EPA on or before October 13, 1998.

ADDRESSES: Written objections and hearing requests, identified by the

docket control number [OPP–300684], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees) and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300684], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300684]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Rita Kumar, c/o Product Manager (PM) 91, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: 9th fl., CM #2 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)308-8291; e-mail: kumar.rita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 3, 1998 (63 FR 10352) (FRL–5772-4), EPA proposed, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of potassium dihydrogen phosphate in or on all food commodities, when applied in accordance with good agricultural practices.

There were no comments or requests for referral to an advisory committee, received in response to the proposed rule.

Based on the reasons set forth in the preamble to the proposed rule, EPA is establishing an exemption from the requirement of a tolerance for potassium dihydrogen phosphate as set forth below.

I. Objections and Hearing Requests

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

Any person may, by October 13, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the hearing clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300684]. A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

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.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing request, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has

exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub.L. 104-4). Nor does it require and prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629), February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). In additions, since tolerance exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: July 29, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1193 is added to subpart D to read as follows:

§ 180.1193 Potassium dihydrogen phosphate; exemption from the requirement of a tolerance.

Potassium dihydrogen phosphate is exempted from the requirement of a tolerance in or on all food commodities when applied as a fungicide in accordance with good agricultural practices.

[FR Doc. 98–21520 Filed 8–11–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300683; FRL–6017–5]

RIN 2070–AB78

Zucchini Juice Added to Buffalo Gourd Root Powder; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of zucchini juice when used as an alternative source of the inert ingredient gustatory stimulant cucurbitacin in the pesticide formulations applied to various food commodities. MicroFlo Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170) requesting the exemption. This regulation eliminates the need to establish a maximum permissible level for residues of zucchini juice.

DATES: This regulation is effective August 12, 1998. Objections and requests for hearings must be received by EPA on or before October 13, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300683], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees) and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300683], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP-300683]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Rita Kumar, c/o Product Manager (PM) 91, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: 9th fl., CM #2 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)308-8291. e-mail: kumar.rita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 25, 1997 (62 FR

34278) (FRL–5719–7), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide tolerance petition by MicroFlo Company, 719 Second Street, Suite 12, Davis, CA 95616. This notice included a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with the Food Quality Protection Act (FQPA) of 1996. The petition requested that 40 CFR 180.1001(d) be amended by adding zucchini (*Cucurbita pepo*) juice to buffalo gourd (*Cucurbita foetidissima*) root powder's tolerance exemption when used in or on various food commodities at 3.4 grams of cucurbitacin per acre per season.

Inert ingredients are all ingredients that are not active as defined in 40 CFR 153.125, and include, but are not limited to the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term inert is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Cucurbitacins, found in plants of the Family Cucutbitaceae, act specifically on Diabroticine beetles (corn rootworm and cucumber beetles) as movement arrestants and compulsive feeding stimulants. These have been used in pesticide products Slam/Adios and Adios AG, which were developed to replace highly toxic corn rootworm and cucumber beetle insecticides. When used along with cucurbitacin in the formulation, a much smaller amount of the pesticide active ingredient carbaryl is needed to achieve efficacy against these pests.

MicroFlo Company's current source of cucurbitacin is buffalo gourd root powder. The Agency established an exemption from the requirement of a tolerance for residues of buffalo gourd root powder (57 FR 40128, September 2, 1992). Now, MicroFlo Company is adding zucchini juice as an additional source of cucurbitacin, since production of buffalo gourd root powder is costly and unreliable, and a notice of filing was published on June 25, 1997, as mentioned above.

There were no comments received in response to the notice of filing.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue..." EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

The data submitted in the petition and other relevant material have been evaluated and were considered in support of this tolerance exemption amendment.

II. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Acute Toxicity

Acute mammalian toxicity data were submitted on zucchini juice as well as buffalo gourd root powder(BGRP). Submitted data were found to be acceptable and performed in accordance with the Subdivision M Guidelines. A summary of the comparative toxicology data shows a more favorable toxicological profile for the zucchini juice (*Cucurbita pepo* juice), as compared to the buffalo gourd root powder (*Cucurbita foetidissima* root powder), as a cucurbit source of cucurbitacins.

The acute mammalian toxicity studies indicate that the zucchini juice is practically non-toxic to mammals. The acute oral, acute dermal, acute inhalation, primary eye, and skin irritation are all toxicity category IV. No acute systemic toxicity, irritation or dermal sensitization was exhibited in the studies performed with the zucchini juice.

The pesticide inert ingredient zucchini juice and the associated component cucurbitacin do not meet the conditions of 40 CFR 158.690(b): based on the results of Tier I toxicology studies, neither Tier II nor III toxicology data are required.

Given the small amounts used and rapid degradation of zucchini juice and associated cucurbitacins, no chronic effects are expected. Neither the zucchini juice and associated cucurbitacins, nor metabolites, are known to, or expected to have any effect on the immune or endocrine systems. Zucchini juice and associated cucurbitacins are not carcinogenic.

III. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from groundwater or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food.* Assumptions, for the purpose of this maximum dietary risk - worst case scenario, (case crop - corn; the example can be extended to other crops) include that the zucchini juice and thus, the cucurbitacin, is applied at the maximum label rate, the maximum number of times, the day of harvest, and all of the material applied to the field is concentrated in the grain; with no loss of zucchini juice nor cucurbitacin due to any environmental, physical, chemical microbial or milling/processing degradation. This will result in 2.4375 pounds of zucchini juice and 0.0073125 pounds (3.319875 grams) of cucurbitacins per acre.

The national average grain yield for corn is 120 - 130 bushels per acre. At 56 pounds per bushel, for the purpose of the calculation, that computes to 6,720 pounds per acre using the lower

yield value. The maximum label rates allow for the application of 3.4 grams of cucurbitacin per acre. Assuming all of the cucurbitacin is concentrated in the grain, cucurbitacin levels would be 0.00051 grams cucurbitacin per pound of grain corn. No adverse effects are anticipated at this low exposure rate.

2. *Drinking water exposure.* Cucurbitacins are insoluble in water and transfer of the zucchini juice to drinking water is highly unlikely. No leaching or groundwater contamination is expected to result from registered uses according to good agricultural practice. No uses are registered for application to bodies of water and none are being sought.

B. Other Non-Occupational Exposure

Registered uses are limited to agricultural crop production use.

IV. Cumulative Exposure to Substances with Common Mechanisms of Toxicity

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Consideration of a common mode of toxicity is not appropriate given that the zucchini juice is practically non-toxic to mammals and no information indicates that toxic effects would be cumulative with any other compounds. Further, no other pesticides or substances are registered with this mode of action.

V. Determination of Safety for Infants and Children

The use sites for the zucchini juice are all agricultural for control of Diabroticine beetles. Therefore, nondietary exposure to infants and children is not expected. The fact that zucchini juice is practically non-toxic to mammals; and exposure is not likely to occur from use, lead EPA to conclude that there is a reasonable certainty that no harm will result to infants and children from exposure to residue of zucchini juice. Because of the lack of toxicity for zucchini juice, EPA has not used the a safety factor analysis is evaluating the risk posed by the compound. This lack of toxicity also supports not applying an additional tenfold safety factor to protect infants and children.

VI. Determination of Safety for U.S. Population

The fact that zucchini juice is practically non-toxic to mammals, and previous Agency actions of granting a temporary exemption (November 30, 1990, 55 FR 49700), and establishing a permanent exemption from the requirement of a tolerance (September 2, 1992, 57 FR 40128), for buffalo gourd root powder as a source of cucurbitacin, support an amendment to the existing tolerance exemption. EPA concludes that zucchini juice is not likely to present a dietary risk under any reasonably foreseeable circumstances. Accordingly, EPA finds that exempting zucchini juice from the requirement for a tolerance will be safe in that there is a reasonable certainty of no harm from aggregate exposure to zucchini juice.

VII. CODEX Maximum Residue Level

No international tolerances of tolerance exemptions have been sought.

VIII. Existing Tolerance or Tolerance Exemptions for This Compound

Prior EPA findings of significant relevance to this petition include an exemption from the requirements of a tolerance for residues of buffalo gourd root powder (*Cucurbita foetidissima* root powder) when used as an inert ingredient (gustatory stimulant) in pesticide formulations applied to growing crops only, at application rates not to exceed 2.5 lbs/acre/season (3.4 gm/acre/season of cucurbitacin). The proposed rule was published on July 9, 1992 (57 FR 30454), and the final rule was published on September 2, 1992 (57 FR 40128).

IX. Objections and Hearing Requests

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

Any person may, by October 13, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the hearing clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

X. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP-300683]. A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM ı2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Electronic comments can be sent directly to EPA at:

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Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public

version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing request, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

XI. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub.L. 104-4). Nor does it require and prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629), February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). In additions, since tolerance exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

XII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: July 29, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.1001 [Amended]

2. In § 180.1001, in paragraph (d), the table is amended by adding the phrase " ; or, Zucchini juice (*Cucurbita pepo* juice)" after "Buffalo gourd root powder (*Cucurbita foetidissima* root powder)" in the "Inert Ingredients" column.

[FR Doc. 98–21521 Filed 8–11–98; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54 and 69

[CC Docket No. 96–45; FCC 98–120]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order changes the funding year for the schools and libraries universal service support mechanism from a calendar year cycle to a fiscal year cycle. This Order also adjusts the amount of money available for schools and libraries, and rural health care providers for the period from January 1, 1998 through June 30, 1999. In addition, this Order establishes rules of priority when a filing window is in effect.

EFFECTIVE DATE: August 12, 1998.

FOR FURTHER INFORMATION CONTACT: Irene Flannery, Common Carrier Bureau, (202) 418–7400 or Adrian Wright, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96–45, adopted June 12, 1998 and released June 22, 1998. The full text is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., N.W., Washington, D.C.

I. Summary of Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96–45

A. Adjustment in Funding Year for Schools and Libraries Support Mechanism

1. Upon reconsideration on our own motion, we find that it is in the public interest to change the funding year for the schools and libraries universal service support mechanism from a calendar year cycle (January 1–December 31) to a fiscal year cycle that will run from July 1–June 30. Moreover, we conclude that the transition to a fiscal year should be implemented immediately. In order to accommodate the transition to a fiscal year funding cycle, the first funding period will be the 18-month period that runs from January 1, 1998 through June 30, 1999. The second funding cycle, therefore, will begin on July 1, 1999. Applications submitted during the initial 75-day filing window and approved for funding by Schools and Libraries Corporation (SLC), therefore, will be funded through June 30, 1999, to the extent permitted by funding constraints. Parties seeking support for the following fiscal year may begin to file applications on October 1, 1998. We direct SLC, in consultation with the Common Carrier Bureau, to establish a filing window for the next fiscal year, to open no later than October 1, 1998. We also conclude that SLC should determine the length of that window and resolve other administrative matters necessary to implement a filing window.

2. We decide to implement a fiscal year funding cycle for schools and libraries, and to transition to this approach immediately, for several reasons. The immediate transition to a fiscal year approach will ameliorate the concerns of applicants seeking support for internal connections that they will be unable to complete installation before December 31, 1998, which marks the end of the funding year if determined on a calendar year basis. We recognize that, because of the delay in issuing funding commitments to schools and libraries, many applicants may not be able to complete by this date the internal connections for which they have sought universal service support. The delay may be attributed to a variety of factors, including the Commission's decision to implement an initial filing window, and the Chairman's request to SLC to conduct an independent audit before disbursing any funds, in order to protect against waste, fraud, and abuse. In short, the schools and libraries support mechanism is being implemented for the first time, and the Commission was not fully aware of the amount of time necessary to establish administrative systems that ensure program integrity and fair and orderly administration. Applicants could not have anticipated these delays at the time they conducted their technology needs assessments. Moreover, applicants understandably have been reluctant to begin service or initiate the installation of internal connections before receipt of a funding commitment. Nevertheless, schools and libraries that have worked diligently to comply with the Commission's requirements should not be burdened unnecessarily by this delay. To further accommodate schools and libraries affected by the delay in implementation, we note that discounts will be available on eligible services effective January 1, 1998 or the date services begin pursuant to the contract, whichever is later. Moreover, the transition to the fiscal year funding cycle adopted herein will afford applicants that will receive support for internal connections the flexibility to complete the installation of internal connections through June of 1999.

3. Furthermore, adopting a fiscal year funding cycle will synchronize the schools and libraries universal service support mechanism with the budgetary and planning cycles of most schools and libraries. This coordination of the support mechanism with the applicants' internal administrative processes will enable schools and libraries to plan their technology needs in a more efficient and organized manner. In addition, using a fiscal year funding cycle will align universal service contribution levels with the local exchange carrier annual access tariff filing schedule. Under our rules, local exchange carriers file their annual tariffs to be effective July 1 of each year. One piece of information these companies require in order to file their tariffs is the universal service contribution factors.

4. We recognize that, under the approach adopted herein, some schools and libraries that did not file within the initial window in 1998 will not be eligible to receive funding until July 1999, rather than January 1999. We find, however, that on balance, the benefits that will be conferred on the approximately 30,000 applicants that filed within the initial window outweigh the hardship caused by the potential six-month delay in funding for some applicants. We also find that this approach strikes the best balance between fulfilling the statutory mandate to enhance access to advanced telecommunications and information services for schools and libraries, and fulfilling the statutory principle that "[q]uality services should be available at just, reasonable, and affordable rates."

5. To accomplish this change, we conclude that the following revisions in the funding cycle must be implemented. First, for applications filed within the initial 75-day filing window seeking discounts on telecommunications services and Internet access, the Administrator shall make funding commitments effective for services provided no earlier than January 1, 1998. These services will be funded at the approved monthly level, consistent with the information included on the school's or library's application, through June 30, 1999. We conclude that this approach is reasonable because telecommunications services and Internet access are generally provided at regular, monthly intervals and are billed on a monthly, recurring basis.

6. Second, for applications filed within the initial 75-day filing window seeking discounts on internal connections, the Administrator shall commit the approved amount of support, but these funds may be utilized during the remainder of 1998 as well as during the transition period through June 30, 1999. We conclude that this approach is reasonable because, unlike telecommunications services and Internet access, internal connections generally entail nonrecurring rather than recurring costs. Moreover, installation of internal connections frequently requires that the projects be timed to occur during periods when school is out of session and students are not present in instructional buildings. Thus, the installation of internal wiring might be completed in stages during winter and summer vacation periods. Accordingly, we amend § 54.507(b) of our rules.

7. The transition to a fiscal year funding cycle adopted herein requires that we reconsider on our own motion the limitation on the exemption from competitive bidding for voluntary extensions of contracts. Our rules currently provide that voluntary extensions of existing contracts are not exempt from the competitive bidding rules. In order to accomplish an orderly transition to the fiscal year funding cycle, however, we conclude that we must allow existing contracts that have a termination date between December 31, 1998 and June 30, 1999 to be voluntarily extended to a date no later than June 30, 1999. Although voluntary extensions of contracts generally are not exempt from the competitive bidding requirement, we adopt this limited exception for voluntary extensions of contracts up to June 30, 1999. To hold otherwise would result in schools and libraries either having to participate in competitive bidding for only a six month service period or not being eligible for support for that six month period. We conclude that either result would be both administratively and financially unworkable for schools and libraries. We find, therefore, that it is in the public interest to amend the exemption (in § 54.511 of our rules) from the competitive bidding requirements, to allow schools and libraries that filed applications within the 75-day initial filing window to extend voluntarily, to a date no later than June 30, 1999, existing contracts that otherwise would terminate between December 31, 1998 and June 30, 1999.

B. Collections During 1998 and the First Six Months of 1999

8. Consistent with section 254 of the Act, and the recommendations of the Federal-State Joint Board on Universal Service, we remain committed to providing support to eligible schools and libraries for telecommunications services, Internet access, and internal connections. We share the concerns of commenters that curtailing collections may have adverse impacts on schools and libraries, particularly the neediest of those entities. We, therefore, remain dedicated to providing support in a manner that targets the most economically disadvantaged schools and libraries. At the same time, we are cognizant of the concerns of many legislators that we must balance the need to provide support for schools and

libraries against the need to continue to provide support for high cost carriers, and to keep telephone rates affordable throughout the country. We note that, pursuant to the 1996 Act, the Commission has taken significant action to implement the universal service provisions of the Act. At the present time, the rural, insular, and high cost telephone subscribers continue to receive high cost support at the same level that they have received for years. In addition, one of the first steps in universal service reform was to make existing high cost support explicit. Moreover, we have expanded the Commission's low-income programs, Lifeline Assistance (Lifeline) and Lifeline Connection Assistance (Link Up). For example, we adopted the Joint Board's recommendation that Lifeline service should be provided to low-income consumers nationwide, even in states that had not previously participated in Lifeline, and that all eligible telecommunications carriers should be required to provide Lifeline service. The Commission remains committed, pursuant to section 254, to implementing *all* parts of universal service.

9. We find, therefore, that it is prudent to begin funding collections for a new mechanism at a reduced level, and allow for the possibility of increased collections in the future. We note that this phase-in approach to funding is consistent with the decision in the *Universal Service Order,* 62 FR 32862 (June 17, 1997), and with the initial funding for high cost support when the National Exchange Carrier Association (NECA) began its high cost collection and distribution efforts in 1986. In providing support for schools, libraries, and rural health care providers, we strive to ensure a smooth transition to the new universal service support mechanisms and to minimize disruption to consumers. We find that our decision to adjust the maximum amounts that may be collected or spent in 1998 is consistent with these goals.

10. We therefore find that we should not increase the quarterly collection amounts at this time with respect to the schools and libraries and rural health care support mechanisms. We therefore conclude that establishing quarterly collection rates for the schools and libraries support mechanism of $325 million for each of the third and fourth quarters of 1998 and the first and second quarters of 1999 will preserve the dual statutory mandates to maintain affordable rates throughout the country and to "enhance * * * access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms * * * and libraries." These collection rates maintain current collection rate levels and will not increase interstate telecommunications carriers' costs of providing service. Moreover, these collection rate levels should ensure that long distance rates, overall, will continue to decline. On June 16, 1998, incumbent local exchange carriers will file new access tariffs with rates to become effective on July 1, 1998. Based on preliminary information filed by these carriers on April 2, 1998, we estimate their total access charge revenues to decline by approximately $720 million below current levels, measured on an annualized basis at current demand levels. The *Third Quarter Contribution Factors Public Notice,* released by the Common Carrier Bureau upon adoption of this Order, will produce a reduction in total interexchange carrier payments of approximately $85 million. Based on this, total interexchange carrier payments for access services and universal service contributions should decrease by approximately $800 million on July 1, 1998. At the same time, based on the estimated demand for support by schools and libraries that filed applications during the initial 75-day filing window, these collection rates will be sufficient to fully fund requests for support for telecommunications services, and Internet access, and to fully fund requests by the neediest schools and libraries for support for internal connections.

11. We further conclude that we should establish maximum collection rates for the rural health care support mechanism at $25 million for each of the third and fourth quarters of 1998. These collection rates are consistent with projected demand and there is no evidence that eligible health care providers will require additional funding this year. Consistent with the *Universal Service Order,* we do not want the Universal Service Administrative Company (USAC) to collect funds that exceed demand. Because the rural health care support mechanism will continue to be funded on a calendar, rather than a fiscal, year basis, and because the mechanism is still in the very early stages, we find that we should not adopt maximum collection rates beyond 1998. Instead, we will evaluate the 1999 collection rates for the rural health care support mechanism in the future.

12. The universal service support mechanisms will provide substantial support to schools, libraries, and health care providers without imposing unnecessary burdens on consumers, and the most economically disadvantaged schools and libraries will receive the greatest share of support, consistent with the discount matrix contained in the *Universal Service Order.* We seek to provide support to schools, libraries, and rural health care providers in a manner that does not require consumers' rates to rise and without causing rate churn. Some commenters assert that a certain amount of rate churn is to be expected in a competitive marketplace. That may be true, but we remain committed to ensuring that universal service does not exacerbate any rate churn that may already exist in the marketplace. Excessive and unnecessary rate churn would be disruptive to consumers, a result we wish to avoid.

13. Numerous commenters take issue with the Commission's proposal to revise collections for the schools and libraries and rural health care universal service support mechanisms consistent with anticipated reductions in access charges. We agree with the Alaska Commission that funding for the new universal service support mechanisms "must be balanced against potential impact on rates and universal service," and that is precisely the approach we are adopting. We conclude, therefore, that a gradual phase-in of the schools, libraries, and rural health care universal service support mechanisms that takes advantage, and reflects the timing, of access charge reductions will provide substantial support for eligible services ordered by eligible schools, libraries and rural health care providers, and at the same time will avoid disruption to consumers.

14. Many commenters note that schools and libraries have expended substantial resources, in terms of both time and money, in applying for discounted services, all with the expectation that a maximum of $2.25 billion in funding would be available. We share the concern of the U.S. Department of Education and other commenters that schools and libraries require predictability of funding to facilitate long-range technology planning, and that our actions here should not discourage schools and libraries from seeking universal service support. We agree that the submission of over 30,000 applications demonstrates substantial demand for universal service support for schools and libraries, and we applaud the entities that have worked diligently to comply with our rules. We are troubled by the disruption imposed on schools and libraries and we hope to avoid this situation in the future. At the same time, we must be mindful of the effects of the

schools and libraries and rural health care support mechanisms on consumers. If we were to fund these support mechanisms to the full amount of the caps adopted in the *Universal Service Order*, there would be negative consequences for consumers. Congress mandated that universal service has many components, including support for schools, libraries, and rural health care providers, as well as the directive to maintain rates at an affordable level. We conclude, therefore, that reducing the collection rates for the schools and libraries and rural health care support mechanisms during the initial implementation is consistent with the Act and is the most prudent course to take at this time.

15. Several commenters maintain that revising collections levels for the schools and libraries and rural health care support mechanisms to match projected reductions in access charges would impose an unreasonable and disproportionate burden on CMRS and other wireless providers that do not pay access charges, and that such an approach would not be competitively neutral. One of the dissenting statements similarly suggests that wireless carriers are being disproportionately burdened because they do not pay access charges. We note first that we are not here adopting our proposal in the *Collection Public Notice*, 63 FR 27542 (May 19, 1998), to increase schools and libraries funding to levels that match projected reductions in access charges paid by long-distance carriers. We are instead freezing for the next four quarters the contribution levels in place during the second quarter of 1998. Thus, no carrier will experience increased universal service obligations as a result of an increase in funding for the schools and libraries support mechanism. Second, we find that CMRS and other wireless carriers are not disproportionately burdened because they pay universal service obligations even though they do not benefit from access charge reductions. Before passage of the 1996 Act, only interstate long-distance carriers paid for universal service in the interstate jurisdiction, either directly or through access charges. The 1996 Act, however changed that by requiring universal service to be supported by *all* interstate telecommunications carriers, whether or not they had previously paid access charges. The point of the 1996 Act in this respect was to end the existing discriminatory treatment of long-distance carriers, and impose universal service obligations as well on other interstate carriers, including CMRS carriers. The 1996 Act also established that universal service be funded in a competitively neutral manner. To implement that, we have required that all interstate telecommunications carriers contribute to universal service based on end-user revenues. We continue to believe that to be a reasonable approach to implementing the competitive neutrality requirements of the Act. Finally, to the extent that the *Collection Public Notice* noted the relation between universal service obligations and access charge reductions, it was simply to note that overall the Commission's actions have reduced the cost of providing long distance service—an issue of significant public interest. We note similarly here that, since passage of the 1996 Act, competition and changes in reciprocal compensation arrangements between CMRS providers and local exchange carriers (LECs) have helped provide for the lowest wireless prices for consumers in history, despite wireless carriers' contributions to universal service.

16. The contention in one of the dissents that universal service contributions, at least to the extent used to provide support for non-telecommunications services, constitute an unlawful tax is neither new nor correct. As the Commission has found previously, contributions to the universal service mechanisms do not represent taxes enacted under Congress's taxing authority. Rather, they constitute fees enacted pursuant to Congress's Commerce power. We noted previously that the contribution requirements do not violate the Origination Clause of the Constitution because "universal service contributions are not commingled with government revenues raised through taxes," and universal service support mechanisms therefore are not a "general welfare scheme" of the type found by courts to be taxes. In *United States* v. *Munoz-Flores* and elsewhere, the Supreme Court has held that Congress does not exercise its taxing powers when funds are raised for a specific government program. Universal service contributions are deposited into a specific fund established as part of the universal service mechanisms to provide money support for those mechanisms and therefore do not constitute taxes.

17. Our conclusion that universal service contributions are not a tax is not changed by the citation to *Thomas* v. *Network Solutions, Inc.* There, the court found that part of the charge made by the National Science Foundation's contractor for the registration of internet domain names was a tax rather than a fee because it provided "revenue for the government for projects that did not directly benefit the payees or otherwise apply to the purposes furthered by the [agreement between the NSF and its contractor]." Here, by contrast, universal service contributions are not intended to raise general revenue as they are placed in a segregated fund dedicated for a specific regulatory purpose, and, as we have noted previously, all telecommunications carriers required to contribute benefit from the ubiquitous telecommunications network that universal service makes possible. Even if this were not the case, *Munoz-Flores* rejects the proposition that a charge is a tax unless the payees benefit from its payment.

18. Finally, we note that the argument that universal service contributions for the schools and libraries mechanisms constitutes an unlawful tax can be and has been made with respect to the entire universal service program. This argument proves too much. If that interpretation were correct, the entire universal service program, including support for service to rural and high cost areas, would constitute an unlawful tax. This interpretation is incorrect because, as noted above, Congress need not exercise its taxing powers to fund a specific government program through fees. This is precisely what Congress has done with respect to universal service.

19. We find, therefore, that it serves the public interest to adjust the amounts that the Commission directed the Administrator to collect and spend for the second six months of 1998, as described herein. We amend our previous decision, and direct USAC to collect only as much as required by demand, but in no event more than $25 million per quarter for the third and fourth quarters of 1998 for the rural health care universal service support mechanism. We direct USAC to collect only as much as required by demand, but in no event more than $325 million per quarter for the third and fourth quarters of 1998 and the first and second quarters of 1999 to support the schools and libraries universal service support mechanism. We also direct the Rural Health Care Corporation (RHCC) to commit to applicants no more than $100 million for disbursement during 1998, and direct SLC to commit to applicants no more than $1.925 billion for disbursement during 1998 and the first half of 1999. The adoption of these limits on disbursements supersedes any prior restrictions on expenditures during 1998.

20. Furthermore, we conclude that the carryover of unused funding authority

will not apply for the funding period January 1, 1998 through June 30, 1999. That is, to the extent that the amounts collected in the funding period January 1, 1998 through June 30, 1999 are less than $2.25 billion, the difference will not be carried over to subsequent funding years. Consistent with the phased-in approach to funding for the schools and libraries and rural health care support mechanisms that we have adopted herein, we find it unnecessary to carry over unused funding authority. To the extent that funds are collected but not disbursed in the funding period January 1, 1998 through June 30, 1999, however, those collected funds would be carried over to the next funding period. Accordingly, we amend §§ 54.507(a) and 54.623(a) of our rules.

C. Rules of Priority for the Schools and Libraries and Rural Health Care Support Mechanisms

21. *Schools and Libraries Support Mechanism.* Upon further consideration, we find that we must adopt additional new rules of priority to ensure that, when a filing window period is in effect, support is directed toward the most economically disadvantaged schools and libraries, as well as toward those located in rural areas. Consistent with the statute and the recommendations of the Joint Board, we have consistently focused on ensuring that the services eligible for universal service support are affordable for all eligible schools and libraries. Under the discount matrix, the most economically disadvantaged schools and libraries are eligible for the greatest levels of discount. For example, schools with between 75 and 100 percent of their students eligible for the national school lunch program are eligible for 90 percent discounts on all eligible services. In the *Universal Service Order*, we established a priority system under which the most economically disadvantaged schools and libraries, those with over 50 percent of their student populations eligible for the national school lunch program, would have priority when only $250 million is available to be committed in a given funding year. The rules of priority adopted in the *Universal Service Order*, however, were premised on the assumption that support would be distributed on a first come, first served basis. That is, the $250 million trigger was established before the Commission adopted a window filing period. We conclude that we must adopt additional new rules of priority premised on the existence of a filing window period during which all applications received within the window are treated as if filed simultaneously. We also conclude that new rules of priority are necessary to account for the fact that the support requested by schools and libraries during the initial filing window exceeds the total authorized support available for the funding period January 1, 1998 through June 30, 1999. Moreover, there is the possibility that support requested by schools and libraries during subsequent filing windows may exceed the total authorized support available in subsequent funding years. Therefore, we adopt new rules of priority that will operate when a filing window is in effect. We do not, however, alter the rules of priority for applicants that request support when a filing window is not in effect. Although, in this initial 18-month funding period, only the applications filed during the initial 75-day filing window will receive support, it is possible that in future funding years support could be provided for applications filed outside of a filing window period.

22. The additional new rules of priority described below will equitably provide the greatest assurance of support to the schools and libraries with the greatest levels of economic disadvantage while ensuring that all applicants filing during a window receive at least some support in the event that the amounts requested for support submitted during the filing window exceed the total support available in a funding year. Because these rules of priority utilize the discount matrix, which provides higher discounts for schools and libraries in rural areas, they also equitably provide greater support to schools and libraries in rural areas. These rules, therefore, further implement the Commission's prior decisions to allocate support for schools and libraries in a manner that provides higher levels of support for rural areas and areas with greater economic disadvantage, while recognizing that every eligible school and library should receive some assistance. Further, these rules of priority are consistent with the suggestions of several commenters. Upon further consideration, we conclude that these new rules of priority will best promote the universal service goals of the Communications Act. Accordingly, we amend § 54.507(g) of our rules.

23. The additional new rules of priority for the schools and libraries universal service support mechanism shall operate as described herein for applicants that submit a request for support within an established filing window. When the filing window closes, SLC shall calculate the total demand for support submitted by applicants during the filing window. If total demand exceeds the total support available in that funding year, SLC shall take the following steps. SLC shall first calculate the demand for telecommunications services and Internet access for all discount categories. These services shall receive first priority for the available funding. SLC shall then calculate the amount of available funding remaining after providing support for all requests for telecommunications services and Internet access. SLC shall allocate the remaining funds to the requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix. That is, schools and libraries eligible for a 90 percent discount shall receive first priority for the remaining funds, and those funds will be applied to their requests for internal connections. To the extent that funds remain, SLC shall next allocate funds toward the requests for internal connections submitted by schools and libraries eligible for an 80 percent discount, then for a 70 percent discount, and shall continue committing funds for internal connections in the same manner to the applicants at each descending discount level until there are no funds remaining.

24. If the remaining funds are not sufficient to support all of the funding requests that comply with the Commission's rules and eligibility requirements within a particular discount level, SLC shall divide the total amount of remaining support available by the amount of support requested within the particular discount level to produce a pro-rata factor. Thus, for example, if all applicants eligible for discounts of 90 percent may be fully funded, but there are not sufficient funds remaining to fully fund internal connections for applicants eligible for discounts of 80 percent, SLC shall reduce the support level for each applicant that is eligible for an 80 percent discount by multiplying the appropriate requested amount of support by the pro-rata factor. SLC shall then allocate funds to each applicant within the 80 percent discount category based on this reduced discount level. SLC shall commit support to all applicants consistent with the calculations described herein. We expect that, for the initial 18-month funding period, the collection levels established in this Order will enable all of the applicants eligible for discounts of 90 percent to receive full support for

internal connections, and that at least a substantial portion, if not all, of the support requested for internal connections by applicants eligible for discounts of 80 percent will be provided.

25. In light of our decision to reduce the collection levels for schools and libraries at this time, we find that our revised method of prioritization is the best way to provide substantial and predictable support for schools and libraries. We conclude that, to the extent that we are unable at this time to fund demand fully, the best approach is to provide full support for recurring services, and to direct support for internal connections to the neediest schools and libraries. We agree with commenters who state that it would be the most economically disadvantaged schools and libraries that would suffer the most if internal connections were not funded. The data received from the applications submitted during the initial filing window also support this revision in our rules of priority.

26. *Rural Health Care Support Mechanism.* The Commission concluded in the *Universal Service Order* that support for health care providers should be allocated on a first-come, first-served basis. Unlike the schools and libraries support mechanism, however, the Commission did not adopt rules that allocate support among health care providers on the basis of their economic circumstances. We determine that we should adopt rules that will take effect in the event that the support requested by health care providers during a filing window exceeds the total authorized support in a funding year. As with the schools and libraries mechanism, our decisions to adjust the maximum collection amounts during 1998 and to adopt a filing window for the rural health care support mechanism lead us to conclude that we should establish rules to allocate funds in the event that all of the available funds will be requested before the window period closes. Several commenters suggested various means by which to prioritize the need of health care providers. We conclude, however, that the complexity of the proposals outweighs their utility. We are not convinced that the administrative burden and the costs associated with any of the proposals outweighs the benefits that would accrue to health care providers.

27. We conclude, therefore, that we should not adopt, at this time, a method by which to prioritize health care providers in the event that demand requested during a filing window exceeds available support. We conclude instead that we should adopt a pro-rata rule that will reduce each applicant's level of support by an equal amount in the event that demand exceeds the total fund allocated for a given funding year. This approach will ensure fairness and equity to each health care provider applying for universal service support and will not impose an undue administrative burden upon either the applicants or the Administrator. If, however, parties submit specific prioritization methods that can be implemented without substantial expense, administrative burden, or complexity, and that ensure equitable distribution of funds as well or better than the pro-rata rule we adopt herein, we will consider modifying this approach in the future.

28. When the filing window closes, RHCC shall calculate the total demand for support submitted by all eligible applicants. If the total demand submitted during the filing window exceeds the total funding available for the funding year, RHCC shall take the following steps. RHCC shall divide the total funds available for the funding year by the total amount of support requested to produce a pro-rata factor. RHCC shall multiply the pro-rata factor by the total amount of support requested by each applicant that has filed during the filing window. RHCC shall then commit funds to each applicant consistent with this calculation. For example, if at the close of the filing window $125 million has been requested in 1998, RHCC would calculate the pro-rata factor by dividing $100 million by $125 million to produce a factor of four-fifths (.8). RHCC would then multiply the total dollar amount requested by each applicant by .8 and would commit such reduced dollar amount to each applicant. We, therefore, add section 54.623(f) to our rules.

29. We conclude that the amendments to our rules adopted herein shall be effective upon publication in the **Federal Register**. Prior to their publication in the **Federal Register**, the Commission will submit a report on the amended rules adopted herein to Congress and the GAO, as required by the Contract with America Advancement Act (CWAAA). Pursuant to the CWAAA, the amended rules may take effect following that submission. Contrary to the suggestion in Commissioner Furchtgott-Roth's dissent, the CWAAA does not require that the Commission wait 60 days after this submission is made for the rules to go into effect. Such a delay in the effective date is required only for major rules, and by definition "major rules" do "not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act." We have confirmed with the Office of Management and Budget, which is responsible for determining whether or not a rule is major, that the amended rules adopted herein are promulgated under the Telecommunications Act of 1996 because they are part of the Commission's continuing implementation of section 254 as added by the 1996 Act and therefore are non-major rules. Despite the Order's citation in the ordering paragraphs to other provisions of the Communications Act as subsidiary sources of authority, it could not be clearer that the amended rules adopted herein implement the 1996 Act because explicit statutory authorization for the universal service mechanism for schools and libraries did not exist prior to addition of section 254 by the 1996 Act. We find that we have good cause to take such action, pursuant to the Administrative Procedure Act, because compliance with these amendments requires preparation only by USAC, SLC, and RHCC, each of which is able to comply with these amendments in a short amount of time. Compliance with these amendments does not require preparation by other affected entities, such as schools, libraries, or health care providers. To the extent that contributors are affected, their burdens are lessened.

D. Level of Compensation for Officers and Employees of the Administrative Corporations

30. We conclude that Congress's intent regarding the level of compensation for officers and employees of SLC and RHCC was clearly stated in both section 2005(c) of the Senate bill and in the Conference Report. The Senate and the House-Senate conferees expressly stated that there should be limits on the level of compensation afforded to the officers and employees of the two independent corporations. We conclude, therefore, consistent with the will of Congress, that, effective July 1, 1998, the administrator must, as a condition of its continued service, compensate all officers and employees of SLC and RHCC at an annual rate of pay, including any non-regular payments, bonuses, or other compensation, that does not exceed the rate of basic pay in effect for Level I of the Executive Schedule under section 5312 of Title 5 of the United States Code. This level of compensation will apply to all officers and employees of SLC and RHCC, as currently organized, as well as to all such officers and employees in the

consolidated administrative corporation following reorganization on July 1, 1998. Accordingly, we amend section 69.620(a) of our rules.

E. Publications of Quarterly Contribution Factors in the Federal Register

31. The existing rule has caused some confusion because it requires publication of the proposed contribution factors in the **Federal Register**, but at the same time states that those proposed factors will become effective within 14 days of the date on which the Public Notice is released. Because an item is not published in the **Federal Register** immediately upon release, and because it is not possible to predict with certainty when an item will be published in the **Federal Register**, the existing rule creates uncertainty about the date on which the contribution factors are deemed approved.

32. We, therefore, amend our rule to clarify that the proposed contribution factors will be deemed approved, in the absence of further Commission action, 14 days after release of the Public Notice in which they are announced. We conclude that the public is given adequate notice of release of the proposed contribution factors because they are posted on the Commission's website immediately upon release. Moreover, this change will eliminate any ambiguity in the rules and will create certainty about when the proposed contribution factors are deemed approved. Accordingly, we amend section 54.709(a)(3) of our rules.

F. Conclusion

33. In conclusion, we note that our colleagues' statements dissenting from this Order raise several issues that are well beyond the scope of this Order. Although we believe it would be inappropriate to include here a point-by-point analysis of issues that are not presented in the matters before the Commission in this Order, we do not wish our silence to be construed as acquiescence. We are, therefore, compelled to note that several of the issues raised in dissent have been addressed at length in the context of prior Commission orders, after due consideration and based on complete records. For example, although one of the dissenting statements questions the legal basis for providing support to schools and libraries for internal connections, the legal basis for that decision was thoroughly established in both the *Universal Service Order* and the *April 10, 1998 Report to Congress.* It was further addressed in the Joint Board's *Recommended Decision* in which the Joint Board unanimously recommended that universal service support be provided to schools and libraries for internal connections. Similarly, as noted above, the Commission previously has established that universal service contributions do not constitute an unlawful tax.

34. One of the dissenting statements also remarks on proposed regulation of carriers' billing practices. We are indeed concerned that, when the Commission takes action to reduce carriers' costs of providing service, carriers' bills are creating the false impression that the opposite is true. We note that these matters are not pending before the Commission, and therefore we do not find it practical or appropriate to comment in this context on specific proposals. We do intend to issue in the near future a notice of proposed rulemaking seeking comment on issues relating to the manner in which carriers include billing statements regarding charges relating to universal service support mechanisms. We intend to use that proceeding to develop a complete record on all the relevant issues, including those raised by our dissenting colleague. Only then, after full consideration, would the Commission be able to determine whether it is necessary and appropriate to take any action on these issues, and if so, what action should be taken. Although we remain committed to ensure that carriers include complete and truthful information regarding the contribution amount, we await further consideration of these matters.

35. Finally, our dissenting colleagues suggest that the Commission has not acted to fulfill the Act's requirements regarding support for high cost carriers and low-income consumers. Pursuant to the 1996 Act, the Commission has taken significant action to implement the universal service provisions of the Act. As we noted earlier, rural, insular, and high cost telephone subscribers continue to receive high cost support at the same level that they have received for years. In addition, one of the first steps in universal service reform was to make existing high cost support explicit. With respect to low-income consumers, we substantially expanded the reach of the Commission's Lifeline and Link Up programs. We are considering petitions for reconsideration of some aspects of our actions, as well as requests from the Joint Board that we refer some issues to it, including the so-called "25/75" issue. We believe that a second referral to the Joint Board, if clearly defined in terms of issues and timing, could be extremely valuable. We are also actively developing an economic model that will assist us in determining the level of high cost support due to carriers in a way that produces neither a windfall for carriers at the expense of consumers nor a spike in local telephone rates. We are confident that in this manner we will fulfill Congress's goals embodied in section 254. These actions demonstrate the Commission's firm commitment to implementing *all* parts of universal service. We look forward to working with Congress, the States, the industry, consumers, and our dissenting colleagues, as we move forward in achieving this goal.

II. Supplemental Final Regulatory Flexibility Analysis

36. In compliance with the Regulatory Flexibility Act (RFA) and the Initial Regulatory Flexibility Analysis (IRFA) that accompanied the *Collection Public Notice* in the **Federal Register**, this Supplemental Final Regulatory Flexibility Analysis (SFRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *Universal Service Order*, only to the extent that changes to that Order adopted here on reconsideration require changes in the conclusions reached in the FRFA. As required by section 603 RFA, 5 USC 603, the FRFA was preceded by an Initial Regulatory Flexibility Analysis (IRFA) incorporated in the Notice of Proposed Rulemaking and Order Establishing the Joint Board (NPRM), and an IRFA, prepared in connection with the Recommended Decision, which sought written public comment on the proposals in the NPRM and the Recommended Decision.

A. Need for and Objectives of This Report and Order and the Rules Adopted Herein

37. The Commission is required by section 254 of the Act to promulgate rules to implement promptly the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules whose principle goal is to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. In this Order, we reconsider five aspects of those rules. First, to ameliorate the concerns of applicants seeking support for internal connections that they will be unable to complete installation before December 31, 1998, we reconsider, on our own motion, the funding cycle for schools and libraries. We conclude that it is in the public interest to change the funding year for the schools and libraries universal service support mechanism from a

calendar year cycle to a fiscal year cycle running from July 1 to June 30. Moreover, this change to a fiscal year funding cycle will synchronize the schools and libraries universal service support mechanism with the budgetary and planning cycles of most schools and libraries and will align universal service contribution levels with projected reductions in access charges. Second, in order to reduce financial burdens on all contributors to universal service, we reconsider, on our own motion, the amounts that will be collected during the second six months of 1998 and the first six months of 1999 for the schools and libraries support mechanism, and the amounts that will be collected during the second six months of 1998 for the rural health care support mechanism. Third, we modify the rules of priority for the schools and libraries mechanism to provide for the greatest assurance of support to schools and libraries with the greatest levels of economic disadvantage while ensuring that all applicants filing during a filing window period receive at least some support in the event that the amounts requested for support submitted during the filing window exceed the total support available in a funding year. In addition, we adopt a rule to pro-rate the distribution of support to health care providers if demand by health care providers exceeds the total support allocated for a given funding year. Fourth, we conclude, consistent with the will of Congress, that the universal service administrator must, as a condition of continued service, compensate all officers and employees of SLC and RHCC at an annual rate of pay, including any non-regular payments, bonuses, or other compensation, that does not exceed the rate of basic pay in effect for Level I of the Executive Schedule under section 5312 of Title 5 of the United States Code, effective July 1, 1998. Fifth, we amend our rule regarding publication of the proposed universal service contribution factors to state that the proposed contribution factors will be deemed approved, in the absence of further Commission action, 14 days after release of the Public Notice in which they are announced. We conclude that this rule change will eliminate ambiguity regarding publication requirements currently existing in our rules.

B. Summary and Analysis of the Significant Issues Raised by Public Comments in Response to the IRFA

38. No entities commented directly in response to either the *September 10 Public Notice* or the *Collection Public Notice,* although some commenters urged the Commission to modify the rules of priority to ensure that applicants in all states, including small applicants, would receive some opportunity to receive funding. In response to the *Collection Public Notice,* some commenters urged the Commission to ensure that schools and libraries that filed applications within the initial 75-day filing window are fully funded, and to ensure that schools and libraries have a predictable level of funding. Other commenters disagreed with the Commission's proposal to link access charge reductions with universal service funding for schools, libraries, and rural health care providers.

C. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Report and Order Will Apply

39. In the FRFA at paragraphs 890–925 of the *Universal Service Order,* we described and estimated the number of small entities that would be affected by the new universal service rules. The rules adopted herein may apply to the same entities affected by the universal service rules. We therefore incorporate by reference paragraphs 890–925 of the *Universal Service Order.*

D. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements and Significant Alternatives

40. In the FRFA to the *Universal Service Order,* we described the projected reporting, recordkeeping, and other compliance requirements and significant alternatives associated with the Schools and Libraries section, the Rural Health Care Provider section, and the Administration section of the *Universal Service Order.* Because the rules adopted herein may only affect those requirements in a marginal way, we incorporate by reference paragraphs 956–60, 968–71, and 980 of the *Universal Service Order,* which describe those requirements and provide the following analysis of the new requirements adopted herein.

41. Under the rules adopted herein, we revise the funding year for the schools and libraries support mechanism from a calendar year cycle (January 1—December 31) to a fiscal year cycle (July 1—June 30). This revision will benefit schools and libraries in three ways: (1) it will ameliorate the concerns of applicants seeking support for internal connections that they will be unable to complete installation before December 31, 1998; (2) it will synchronize the schools and libraries support mechanism with the budgetary and planning cycles of most schools and libraries; and (3) it will align universal service contribution levels with projected reductions in access charges. These changes will not have a significant impact on the reporting, recordkeeping, and other compliance requirements for the schools and libraries and rural health care universal service support mechanisms.

42. In addition, we do not revise the annual caps adopted in the *Universal Service Order,* but we do adjust the maximum amounts that may be collected and spent during the initial eighteen months of implementation for the schools and libraries support mechanism and during the initial year of implementation for the rural health care provider support mechanism. The Administrator is instructed to collect only as much as required by demand, but in no event more than $25 million per quarter for the third and fourth quarters of 1998 to support the rural health care universal service support mechanism and no more than $325 million per quarter for the third and fourth quarters of 1998 and the first and second quarters of 1999 to support the schools and libraries universal service support mechanism. We also direct the Administrator neither to commit nor disburse more than $100 million for the rural health care support mechanism for 1998 and no more than $1.925 billion for the schools and libraries support mechanism for the eighteen month period from January 1, 1998 through June 30, 1999. These changes will not have a significant impact on the reporting, recordkeeping, and other compliance requirements for the schools and libraries and rural health care universal service support mechanisms.

43. In addition, we modify the rules of priority for the schools and libraries support mechanism to equitably provide the greatest assurance of support to the schools and libraries with the greatest level of economic disadvantage while ensuring that all applicants filing during a filing window period receive at least some support in the event that the amounts requested for support submitted during the filing window exceed the total support available in a funding year. We also adopt a rule to pro-rate the distribution of support to health care providers if demand by health care providers exceeds the total fund allocated for a given funding year. These changes will not have a significant impact on the reporting, recordkeeping, and other compliance requirements for the schools and libraries and rural health care universal service support mechanisms.

44. Moreover, consistent with the will of Congress, we conclude that the universal service Administrator must, as a condition of continued service, compensate all officers and employees of SLC and RHCC at an annual rate of pay, including any non-regular payments, bonuses, or other compensation, that does not exceed the rate of basic pay in effect for Level I of the Executive Schedule under section 5312 of Title 5 of the United States Code, effective July 1, 1998. We also amend our rule regarding publication of the proposed universal service contribution factors to state that the proposed contribution factors will be deemed approved, in the absence of further Commission action, 14 days after release of the Public Notice in which they are announced. Neither of these changes will have a significant impact on the reporting, recordkeeping, and other compliance requirements for the schools and libraries and rural health care universal service support mechanisms.

E. Steps Taken to Minimize the Significant Economic Impact on a Substantial Number of Small Entities, and Significant Alternatives Considered

45. In the FRFA to the *Universal Service Order*, we described the steps taken to minimize the significant economic impact on a substantial number of small entities consistent with stated objectives associated with the Schools and Libraries section, the Rural Health Care Provider section, and the Administration section of the *Universal Service Order*. Because the rules adopted herein may only affect those requirements in a marginal way, we incorporate by reference paragraphs 961–67, 972–76, and 981–82 of the *Universal Service Order*, which describe those requirements and provide the following analysis of the new requirements adopted herein.

46. As described above, our decision to change to a fiscal year funding cycle will benefit schools and libraries, as well as their chosen service providers, who may be small entities, by equitably providing the greatest assurance of support to the schools and libraries with the greatest levels of economic disadvantage while ensuring that all applicants filing during a window receive at least some support in the event that the amounts requested for support submitted during the filing window exceed the total support available in a funding year. Some schools and libraries that did not file within the initial window in 1998 will not be eligible to receive funding until July 1999, rather than January 1999. We find, however, that on balance, the benefits that will be conferred on the approximately 30,000 applicants that filed within the initial window outweigh this potential six-month delay in funding for some applicants. We also find that this approach strikes the best balance between fulfilling the statutory mandate to enhance access to advanced telecommunications and information services for schools and libraries, and fulfilling the statutory principle of providing quality services at "just, reasonable, and affordable rates," without imposing unnecessary burdens on schools and libraries or service providers, including small entities.

47. As described above, we adopt the decision to adjust the amount of money to be collected in 1998 and the first and second quarters of 1999 for the schools and libraries universal service support mechanism and in 1998 for the rural health care support mechanism because we do not want to impose unnecessary financial requirements on service provider contributors to universal service, including contributors that are small entities. We find that our decision to adjust the maximum collectible amounts provides substantial support to schools, libraries, and rural health care providers without imposing unnecessary burdens on carriers or subscribers, including small entities.

48. Moreover, our conclusion that the universal service Administrator must, as a condition of continued service, compensate all officers and employees of SLC and RHCC at an annual rate of pay that does not exceed the rate of basic pay in effect for Level I of the Executive Schedule under section 5312 of Title 5 of the United States Code, effective July 1, 1998 will not have a significant impact on the reporting, recordkeeping, and other compliance requirements for the schools and libraries and rural health care universal service support mechanisms on any entities other than SLC and RHCC. For those entities, compliance with the amended rule will have a significant impact on the level of compensation afforded some of their employees, but we conclude that this decision is consistent with the intent of Congress. Our decision to amend our rule regarding publication of the proposed universal service contribution factors will not have a significant impact on the reporting, recordkeeping, and other compliance requirements for the schools and libraries and rural health care universal service support mechanisms.

III. Ordering Clauses

49. Accordingly, it is ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 USC 151–154, 201–205, 218–220, 254, 303(r), 403, and 405, section 1.108 of the Commission's rules, 47 CFR 1.108, the Fifth Order on Reconsideration in CC Docket No. 96–45 is adopted.

50. It is further ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 USC 151–154, 201–205, 218–220, 254, 303(r), 403, and 405, section 1.108 of the Commission's rules, 47 CFR 1.108, the Fourth Report and Order in CC Docket No. 96–45 is adopted.

51. It is further ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 USC 151–154, 201–205, 218–220, 254, 303(r), 403, and 405, section 1.108 of the Commission's rules, 47 CFR 1.108, Part 54 of the Commission's rules, 47 CFR Part 54, and Part 69 of the Commission's rules, 47 CFR Part 69, are amended.

52. It is further ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 USC 151–154, 201–205, 218–220, 254, 303(r), 403, and 405, section 1.108 of the Commission's rules, 47 CFR 1.108, effective July 1, 1998, Universal Service Administrative Company shall compensate all officers and employees of Schools and Libraries Corporation and Rural Health Care Corporation at an annual rate of pay, including any non-regular payments, bonuses, or other compensation, that does not exceed the rate of basic pay in effect for Level I of the Executive Schedule under section 5312 of title 5 of the United States Code.

53. It is further ordered that, because the Commission has found good cause, the rule changes are effective August 12, 1998.

54. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Fifth Order on Reconsideration and Fourth Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 54

Healthcare providers, Libraries, Reporting and recordkeeping

requirements, Schools, Telecommunications, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission

Magalie Roman Salas,

Secretary.

Rule Changes

Parts 54 and 69 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. Secs. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Section 54.507 is amended by revising paragraphs (a), (b) and (g) to read as follows:

§ 54.507 Cap.

(a) *Amount of the annual cap.* The annual cap on federal universal service support for schools and libraries shall be $2.25 billion per funding year, and all funding authority for a given funding year that is unused in that funding year shall be carried forward into subsequent funding years for use in accordance with demand, with the following exceptions:

(1) No more than $625 million shall be collected or spent for the funding period from January 1, 1998 through June 30, 1998. No more than $325 million shall be collected for the funding period from July 1, 1998 through September 30, 1998. No more than $325 million shall be collected for the funding period from October 1, 1998 through December 31, 1998. No more than $325 million shall be collected for the funding period from January 1, 1999 through March 31, 1999. No more than $325 million shall be collected for the funding period from April 1, 1999 through June 30, 1999. No more than $1.925 billion shall be collected or disbursed during the eighteen month period from January 1, 1998 through June 30, 1999.

(2) The carryover of unused funding authority will not apply for the funding period January 1, 1998 through June 30, 1999. To the extent that the amounts collected in the funding period January 1, 1998 through June 30, 1999 are less than $2.25 billion, the difference will not be carried over to subsequent funding years. Carryover of funds will occur only to the extent that funds are collected but not disbursed in the funding period January 1, 1998 through June 30, 1999.

(b) *Funding year.* A funding year for purposes of the schools and libraries cap shall be the period July 1 through June 30. For the initiation of the mechanism only, the eighteen month period from January 1, 1998 to June 30, 1999 shall be considered a funding year. Schools and libraries filing applications within the initial 75-day filing window shall receive funding for requested services through June 30, 1999.

* * * * *

(g) *Rules of priority.* Schools and Libraries Corporation shall act in accordance with paragraph (g)(1) of this section with respect to applicants that file a Form 471, as described in § 54.504(c) of this part, when a filing period described in paragraph (c) of this section is in effect. Schools and Libraries Corporation shall act in accordance with paragraph (g)(2) of this section with respect to applicants that file a Form 471, as described in § 54.504(c) of this part, at all times other than within a filing period described in paragraph (c) of this section.

(1) When the filing period described in paragraph (c) of this section closes, Schools and Libraries Corporation shall calculate the total demand for support submitted by applicants during the filing period. If total demand exceeds the total support available for that funding year, Schools and Libraries Corporation shall take the following steps:

(i) Schools and Libraries Corporation shall first calculate the demand for telecommunications services and Internet access for all discount categories, as determined by the schools and libraries discount matrix in § 54.505(c) of this part. These services shall receive first priority for the available funding.

(ii) Schools and Libraries Corporation shall then calculate the amount of available funding remaining after providing support for all telecommunications services and Internet access for all discount categories. Schools and Libraries Corporation shall allocate the remaining funds to the requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix in § 54.505(c) of this part. Schools and libraries eligible for a 90 percent discount shall receive first priority for the remaining funds, and those funds will be applied to their requests for internal connections.

(iii) To the extent that funds remain after the allocation described in §§ 54.507(g)(1) (i) and (ii), Schools and Libraries Corporation shall next allocate funds toward the requests for internal connections submitted by schools and libraries eligible for an 80 percent discount, then for a 70 percent discount, and shall continue committing funds for internal connections in the same manner to the applicants at each descending discount level until there are no funds remaining.

(iv) If the remaining funds are not sufficient to support all of the funding requests within a particular discount level, Schools and Libraries Corporation shall divide the total amount of remaining support available by the amount of support requested within the particular discount level to produce a pro-rata factor. Schools and Libraries Corporation shall reduce the support level for each applicant within the particular discount level, by multiplying each applicant's requested amount of support by the pro-rata factor.

(v) Schools and Libraries Corporation shall commit funds to all applicants consistent with the calculations described herein.

(2) When a filing period described in paragraph (c) of this section is not in effect, and when expenditures in any funding year reach the level where only $250 million remains before the cap will be reached, funds shall be distributed in accordance with the following rules of priority:

3. Section 54.511 is amended by revising paragraph (d) to read as follows:

§ 54.511 Ordering services.

* * * * *

(d) The exemption from the competitive bid requirements set forth in paragraph (c) of this section shall not apply to voluntary extensions of existing contracts, with the exception that an eligible school or library as defined under § 54.501 or consortium that includes an eligible school or library, that filed an application within the 75-day initial filing window (January 30, 1998–April 15, 1998) may voluntarily extend, to a date no later than June 30, 1999, an existing contract that otherwise would terminate between December 31, 1998 and June 30, 1999.

4. Section 54.623 is amended by revising paragraph (a) and adding paragraph (f) to read as follows:

§ 54.623 Cap.

(a) *Amount of the annual cap.* The annual cap on federal universal service support for health care providers shall be $400 million per funding year, with the following exceptions. No more than $50 million shall be collected for the

funding period from January 1, 1998 through June 30, 1998. No more than $25 million shall be collected for the funding period from July 1, 1998 through September 30, 1998. No more than $25 million shall be collected for the funding period from October 1, 1998 through December 31, 1998. No more than $100 million shall be committed or disbursed for the 1998 funding year.

* * * * *

(f) *Pro-rata reductions.* Rural Health Care Corporation shall act in accordance with this paragraph when a filing period described in paragraph (c) of this section is in effect. When a filing period described in paragraph (c) of this section closes, Rural Health Care Corporation shall calculate the total demand for support submitted by all applicants during the filing window. If the total demand exceeds the total support available for the funding year, Rural Health Care Corporation shall take the following steps:

(1) Rural Health Care Corporation shall divide the total funds available for the funding year by the total amount of support requested to produce a pro-rata factor.

(2) Rural Health Care Corporation shall calculate the amount of support requested by each applicant that has filed during the filing window.

(3) Rural Health Care Corporation shall multiply the pro-rata factor by the total dollar amount requested by each applicant. Rural Health Care Corporation shall then commit funds to each applicant consistent with this calculation.

5. Section 54.709 is amended by revising paragraph (a)(3) to read as follows:

§ 54.709 Computations of required contributions to universal service support mechanisms.

(a) * * *

(3) Total projected expenses for universal service support programs for each quarter must be approved by the Commission before they are used to calculate the quarterly contribution factors and individual contribution. For each quarter, the High Cost and Low Income Committee or the permanent Administrator once the permanent Administrator is chosen and the Schools and Libraries and Rural Health Care Corporations must submit their projections of demand for the high cost and low-income programs, the school and libraries program, and rural health care program, respectively, and the basis for those projections, to the Commission and the Common Carrier Bureau at least 60 calendar days prior to the start of that quarter. For each quarter, the Administrator and the Schools and Libraries and Rural Health Care Corporations must submit their projections of administrative expenses for the high cost and low-income programs, the schools and libraries program and the rural health care program, respectively, and the basis for those projections to the Commission and the Common Carrier Bureau at least 60 calendar days prior to the start of that quarter. Based on data submitted to the Administrator on the Universal Service Worksheets, the Administrator must submit the total contribution bases to the Common Carrier Bureau at least 60 days before the start of each quarter. The projections of demand and administrative expenses and the contribution factors shall be announced by the Commission in a public notice and shall be made available on the Commission's website. The Commission reserves the right to set projections of demand and administrative expenses at amounts that the Commission determines will serve the public interest at any time within the 14-day period following release of the Commission's public notice. If the Commission takes no action within 14 days of the date of release of the public notice announcing the projections of demand and administrative expenses, the projections of demand and administrative expenses, and contribution factors shall be deemed approved by the Commission. Once the projections and contribution factors are approved, the Administrator shall apply the quarterly contribution factors to determine individual contributions.

* * * * *

PART 69—ACCESS CHARGES

6. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, and 403 unless otherwise noted.

7. Section 69.620 is amended by revising paragraph (a) to read as follows:

§ 69.620 Administrative expenses of independent subsidiary, Schools and Libraries Corporation, and Rural Health Care Corporation.

(a) The annual administrative expenses of the independent subsidiary, Schools and Libraries Corporation and Rural Health Care Corporation, should be commensurate with the administrative expenses of programs of similar size, with the exception of the salary levels for officers and employees of the corporations. The annual administrative expenses may include, but are not limited to, salaries of officers and operations personnel, the costs of borrowing funds, equipment costs, operating expenses, directors' expenses, and costs associated with auditing contributors of support recipients.

(1) All officers and employees of the independent subsidiary, Schools and Libraries Corporation and Rural Health Care Corporation, may be compensated at an annual rate of pay, including any non-regular payments, bonuses, or other compensation, in an amount not to exceed the rate of basic pay in effect for Level I of the Executive Schedule under section 5312 of title 5 of the United States Code.

(2) The level of compensation described in § 69.620(a)(1) shall be effective July 1, 1998.

* * * * *

[FR Doc. 98–21588 Filed 8–11–98; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–179; RM–9064]

Radio Broadcasting Services; Old Forge and Newport Village, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of 21st Century Radio Ventures, Inc., reallots Channel 259A from Old Forge, NY, to Newport Village, NY, as the community's first local aural service, and modifies petitioner's construction permit (BPH–940203MC) to specify Newport Village as its community of license, and allots Channel 223A to Old Forge as the community's second local FM service. Channel 259A can be allotted to Newport Village in compliance with the Commission's minimum distance separation requirements with a site restriction of 10 kilometers (6.2 miles) northwest, at coordinates 43–15–43; 75–05–02, to avoid a short-spacing to Station WTKW, Channel 258A, Bridgeport, New York, and Station WRVE, Channel 258B, Schenectady, New York. Channel 223A can be allotted to Old Forge in compliance with the Commission's minimum distance separation requirements with regard to all domestic allotments without the imposition of a site restriction, at coordinates 43–42–42; 74–58–24, but is short-spaced to Station KFQR–FM, Channel 223C1, Montreal, Quebec, Canada. Canadian concurrence in both allotments has been received

since both communities are located within 320 kilometers (200 miles) of the U.S.-Canadian border. The Old Forge allotment has been concurred in as a specially negotiated short-spaced allotment. *See* 62 FR 44435, August 21, 1997, 63 FR 19701, April 21, 1998. With this action, this proceeding is terminated.

DATES: Effective September 21, 1998. A filing window for Channel 223A at Old Forge, NY, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–179, adopted July 29, 1998, and released August 7, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Newport Village, Channel 259A, and by removing Channel 259A and adding Channel 223A at Old Forge.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–21586 Filed 8–11–98; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1805, 1822, and 1844

Administrative Revisions to the NASA FAR Supplement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule to amend the NASA FAR Supplement (NFS) to make minor editorial changes to the title of Subpart 1822.14, and in Part 1844, Subcontracting Policies and Procedures. These changes result from revisions to these references in Federal Acquisition Circular 97–05, and include new section titles and numbering. In addition, an editorial change is made to Subpart 1805.3 to correct a reference to an obsolete telephone number.

EFFECTIVE DATE: August 12, 1998.

FOR FURTHER INFORMATION CONTACT: James H. Dolvin, NASA, Office of Procurement, Contract Management Division (Code HK), (202) 358–1279.

SUPPLEMENTARY INFORMATION:

Background

Federal Acquisition Circular 97–05, published in the **Federal Register** on June 22, 1998, contained several changes in section titles and numbering which required changes in the NFS to maintain its consistency with the FAR. These changes include: new titles for Sections 1822.14 (Employment of Workers with Disabilities), 1844.201 (Consent and Advance Notification Requirements), and 1844.201–1 (Consent Requirements); and relocating the present language in Section 1844.201–2 to new Section 1844.201–1. Another administrative change is made to delete an outdated telephone number from section 1805.303–71.

Impact

This rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comment is not required.

List of Subjects in 48 CFR Parts 1805, 1822, and 1844

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1805, 1822, and 1844 are amended as follows:

1. The authority citation for 48 CFR Parts 1805, 1822, and 1844 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1805—PUBLICIZING CONTRACT ACTIONS

§ 1805.303–71 [Amended]

2. In subpart 1805.303–71, the second sentence of the introductory text in paragraph (b) is amended by deleting the reference "(202–358–2080)".

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

Subpart 1822.14 [Amended]

3. In subpart 1822.14, the subpart heading "Employment of the Handicapped" is revised to read "Employment of Workers with Disabilities".

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

1844.201, 1844.201–1 [Revised]

4. Section 1844.201 and 1844.201–1 are revised to read as follows:

1844.201 Consent and advance notification requirements.

1844.201–1 Consent requirements. (NASA supplements paragraph (a))

(a)(i) In determining special surveillance consent requirements, the contracting officer should consider specific subcontract awards, as well as any individual systems, subsystems, components, technologies, and services that should have contracting officer consent prior to being subcontracted.

(ii) For each planned contract award expected to exceed $1 million in total estimated value (inclusive of options), the contracting officer should consider such factors as the following to determine whether certain subcontracts require special surveillance:

(A) The degree of subcontract pricing uncertainties at the time of contract award;

(B) The overall quality of the contractor's approach to pricing subcontracts;

(C) The extent of competition achieved, or to be achieved, by the contractor in the award of subcontracts;

(D) Technical complexity and the criticality of specific supplies, services, and technologies on the successful performance of the contract; and

(E) The potential impact of planned subcontracts on source selection or incentive arrangements.

(iii) The contracting officer shall document results of the review in the contract file. For contract modifications and change orders, the contracting officer shall make the determination required by paragraph (a)(ii) of this section whenever the value of any

subcontract resulting from the change order or modification is proposed to exceed $100,000 or is one of a number of subcontracts with a single subcontractor for the same or related supplies or services that are expected cumulatively to exceed $100,000.

(iv) In addition, any subcontract under a cost type prime contract shall be identified for special surveillance if consent was not provided at the time of contract award and cost or pricing data would be required in accordance with FAR 15.404–3(c).

1844.201–2 [Removed]

5. Section 1844.201–2 is removed.

[FR Doc. 98–21617 Filed 8–11–98; 8:45 am]
BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD09

Endangered and Threatened Wildlife and Plants; Final Rule Listing Five Plants From Monterey County, CA, as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for four plants: *Astragalus tener* var. *titi* (coastal dunes milk-vetch), *Piperia yadonii* (Yadon's piperia), *Potentilla hickmanii* (Hickman's potentilla), and *Trifolium trichocalyx* (Monterey clover); and threatened status for *Cupressus goveniana* ssp. *goveniana* (Gowen cypress). The five taxa are found primarily along the coast of northern Monterey County, California, with one species also occurring in San Mateo County and historical populations of another occurring in Los Angeles and San Diego counties. The five plant taxa are threatened by one or more of the following: alteration, destruction, and fragmentation of habitat resulting from urban and golf course development; recreational activities; competition with alien species; and disruption of natural fire cycles due to fire suppression associated with increasing residential development around and within occupied habitat. *Astragalus tener* var. *titi* and *Potentilla hickmanii* are also more susceptible to extinction by random events due to their small numbers of populations or individuals. This rule implements the Federal protection and recovery provisions afforded by the Act for these plant taxa. A notice of withdrawal of the proposal to list the black legless lizard (*Anniella pulchra nigra*), which was proposed for listing along with the five plant taxa considered in this rule, is published concurrently with this rule.

DATES: This rule is effective September 11, 1998.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California, 93003.

FOR FURTHER INFORMATION CONTACT: Carl Benz, Assistant Field Supervisor, Ventura Fish and Wildlife Office (see ADDRESSES section) (telephone number 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

The Monterey Peninsula on the central California coast has been noted for a high degree of species endemism (Axelrod 1982, Howitt 1972). Species with more northern affinities reach their southern limits on the Peninsula; species with more southern affinities reach their northern limits there as well (Howitt and Howell 1964). The Monterey Peninsula is influenced by a maritime climate that is even more pronounced due to the upwelling of cool water from the Monterey submarine canyon. Rainfall amounts to only 38 to 51 centimeters (cm) (15 to 20 inches (in)) per year, but summer fog-drip is a primary source of moisture for plants that would otherwise not be able to persist with such low rainfall. Some taxa, such as the coastal closed-cone pines and cypresses are relicts, i.e., stands of species that once had a more continuous, widespread distribution in the more mesic climate of the late Pleistocene period, but then retreated to small pockets of cooler and wetter conditions along the coast ranges during the hotter and drier xerothermic period between 8,000 and 4,000 years ago (Axelrod 1982).

In 1602, the Spanish government commissioned Sebastian Viscaino to map the coastline; he traveled as far north as the Mendocino coast. In his journal, he made note of the "pine covered headlands" and the "great pine trees, smooth and straight, suitable for the masts and yards of ships" that he saw while anchored in Monterey Bay (Larkey 1972). During the early 1900s, Willis L. Jepson characterized the forests on the Monterey Peninsula as the "most important silva ever," and encouraged Samuel F.B. Morse of the Del Monte Properties Company to explore the possibilities of preserving the unique forest communities. Morse believed that developing recreational facilities would allow income to be derived from the property while maintaining the forest intact (Larkey 1972).

Maps compiled by the U.S. Forest Service (FS) to show plant associations that were similar in "fire-hazard characteristics and in uses or qualities of economic importance" portray the bulk of the Monterey Peninsula as Monterey pine (*Pinus radiata*) forest with a discrete stand of Bishop pine (*Pinus muricata*) in the center of the Peninsula (FS 1941). The coastline was fringed with either "barren" stretches, grassland, or "sagebrush," and a stretch of "cypress species" extending east along the coast from what is known as Cypress Point. By 1930, however, the construction of three golf courses likely resulted in the removal of some stands of Monterey pines.

Only three native Monterey pine stands remain in California, one on the Monterey Peninsula, a second near Año Nuevo Point in northern Santa Cruz and southern San Mateo counties, and a third near Cambria, in San Luis Obispo County. The Monterey Peninsula stand is not only the most extensive of the three, it is also unique in its association with *Pinus muricata, Cupressus goveniana* ssp. *goveniana* (Gowen cypress), and *Cupressus macrocarpa* (Monterey cypress). While *P. radiata* grows well on a variety of soils, it does not do well on the acidic, poorly-drained soils found on Huckleberry Hill centrally located on the Monterey Peninsula (Griffin 1972). Here, the less aggressive *C. goveniana* ssp. *goveniana* and *P. muricata* are spared competition from *P. radiata*. Some of the chaparral species associated with these forest stands include *Arctostaphylos hookeri* ssp. *hookeri* (Hooker's manzanita), *Arctostaphylos tomentosa* var. *tomentosa* (shaggy-barked manzanita), *Adenostema fasciculata* (chamise), and *Vaccinium ovatum* (huckleberry) (Jones and Stokes Assoc. 1994b; Vogl *et al.* 1988).

Much of what the FS mapped in 1941 as grassland or "barren" (which most likely included coastal dunes) on the peninsular coastline has been subsequently converted to golf courses. Remnant dunes support a coastal dune scrub community and the southernmost occurrences for *Erysimum menziesii* (Menzies wallflower), *Lupinus tidestromii* (Tidestrom's lupine), and

Gilia tenuiflora ssp. *arenaria* (dune gilia), all federally endangered species (U.S. Fish and Wildlife Service (USFWS) 1992). It is uncertain what species characterized the grasslands mapped by the FS. Aside from harboring small populations of several of the species that are included in this final rule, these patches of herbaceous vegetation now support a large number of alien grasses and succulents (Ferreira 1995). As for the patches mapped by the FS as "sagebrush," these most likely matched what is currently called coastal sage scrub, a community dominated by *Artemisia californica* (California sagebrush). For the most part, these patches occurred within what are now urbanized portions of the cities of Monterey and Pacific Grove and the Pacific Grove Municipal Golf Course.

Discussion of the Five Taxa

Astragalus tener var. *titi* (coastal dunes milk-vetch) was first collected by Mrs. Joseph Clemens in 1904 along 17-Mile Drive on the Monterey Peninsula "near an old hut composed of abalone shells and coal-oil cans." Alice Eastwood named the plant *Astragalus titi* in honor of Dr. F. H. Titus (Eastwood 1905). Subsequently, John Thomas Howell (1938), while comparing a specimen of *A. tener* that was collected by David Douglas near Salinas, Monterey County, remarked that although "*Astragalus titi* Eastwood has generally been regarded as the same as *Astragalus tener*, * * * the two plants are not the same and *Astragalus titi* seems worthy of varietal, if not specific recognition." Rupert Barneby published the combination *A. tener* var. *titi* in 1950, noting the difference in flower size, habitat, and geographic range between it and *A. tener* var. *tener* (Barneby 1950).

Astragalus tener var. *titi* is a diminutive annual herb of the pea family (Fabaceae). The slender, slightly pubescent stems reach 1 to 2 decimeters (dm) (4 to 8 in) in height; the pinnately compound leaves are 2 to 7 cm (0.8 to 2.7 in) long with 7 to 11 leaflets, each having a slightly bilobed tip. The tiny lavender to purple flowers are 5 to 6 millimeters (mm) (0.3 in) long and are arranged in subcapitate racemes of 2 to 12 flowers. The seed pods are straight to sickle-shaped and 7 to 14 mm (0.3 to 0.6 in) long (Barneby 1964).

Two historical locations from Los Angeles County (Hyde Park in Inglewood and Santa Monica) and two from San Diego County (Silver Strand and Soledad) were annotated by Barneby as *Astragalus tener* var. *titi* (Barneby 1950). It is unlikely that suitable habitat remains at the Los Angeles locations, since the area has been heavily urbanized. In San Diego County, the Silver Strand area is owned by the Department of Defense (Miramar Naval Weapons Center), and a portion has been used for amphibious vehicle training exercises. Another portion of Silver Strand has been leased by the Navy to the California Department of Parks and Recreation (CDPR) for development of a campground and recreational facilities. Numerous unsuccessful searches for the plant have been made in these locations since 1980 (Ferreira 1995; Natural Diversity Database (NDDB) 1997).

The only known extant population of *Astragalus tener* var. *titi* occurs along 17-Mile Drive on the western edge of the Monterey Peninsula on land owned by the Pebble Beach Company and the Monterey Peninsula Country Club. Colonies of the milk-vetch occur on a relatively flat coastal terrace within 30 meters (m) (100 feet (ft)) of the ocean beach and 8 m (25 ft) above sea level. The loamy fine sands that comprise a series of shallow swales on the terrace surface support standing water during wet winter and spring seasons. Individual plants are found on the bottoms or sides of the swales growing in association with other low growing grasses and herbs, including the alien *Plantago coronopus* (cut-leaf plantain). In the 1980s and early 1990s, from 15 to 1,000 individuals had been counted in this population (Ferreira 1995). In 1995, four additional colonies of this taxon were located in similarly moist habitats within 400 m (1,300 ft) of the previously known plants. A thorough survey of surrounding patches of suitable habitat was made and a total of 4000 individuals were counted in 1995 in 11 scattered colonies (Jones and Stokes Assoc. 1996).

The 11 colonies are bisected by 17-Mile Drive, and occur in remnant patches of habitat that are bounded by roads, golf greens, equestrian trails and a bank covered by the alien plant, *Carpobrotus edulis* (fig-marigold) (Ferreira 1995, Jones and Stokes Assoc. 1996). *Astragalus tener* var. *titi* is currently threatened with alteration of habitat from trampling associated with recreational activities, such as hiking, picnicking, ocean viewing, wildlife photography, equestrian use, and golfing. Due to the fragmented nature of its habitat and the human uses that surround it, the species is also more vulnerable to extinction from random events. *Astragalus tener* var. *titi* may also be threatened by competition from the alien plants, *C. edulis* and *Plantago coronopus*.

Cupressus goveniana ssp. *goveniana* was first collected by Karl Hartweg from Huckleberry Hill (Monterey Peninsula) in 1846 (Sargent 1896, Wolf and Wagener 1948). The plant was described as *Cupressus goveniana* by British horticulturalist George Gordon in 1849 who named it after fellow horticulturalist James R. Gowen (Sargent 1896). Sargent (1896) described the tree as being widely distributed "from the plains of Mendocino County to the mountains of San Diego County" as he included taxa now recognized as distinct in his definition of *C. goveniana*. John G. Lemmon published the name *C. goveniana* var. *pigmaea* in 1895 to refer to the stands found on the "White Plains" of Mendocino County, also referred to as pygmy cypress or Mendocino cypress. As a result of this segregation, the material from the Monterey area would be treated as *C. goveniana* var. *goveniana*. The taxon is currently treated as *C. goveniana* ssp. *goveniana* (Bartel 1993).

Cupressus goveniana ssp. *goveniana* (Gowen cypress) is a small coniferous tree or shrub in the cypress (Cupressaceae) family. Most of the 10 taxa in the genus *Cupressus* found in California currently have relatively small ranges (Vogl *et. al.* 1988). Of the three coastal cypresses, native stands of *C. macrocarpa* (Monterey cypress) and *C. goveniana* ssp. *goveniana* are both restricted to the Monterey Peninsula and Point Lobos in Monterey County.

Cupressus goveniana ssp. *goveniana* generally reaches a height between 5 and 7 m (17 to 23 ft) (Munz 1968), though Griffin noted one individual that was 10 m (33 ft) high at Huckleberry Hill (Griffin and Critchfield 1976). The sparsely branched tree forms a short, broad crown with a spread of 2 to 4 m (7 to 13 ft). The bark is smooth brown to gray, but becomes rough and fibrous on old trees. The scale-like foliage is a light rich green, with leaves 1 to 2 mm long (0.04 to 0.08 in). The female cones are subglobose (nearly spherical), 10 to 15 mm (to 0.1 in) long, and produce 90 to 110 seeds (Wolf and Wagener 1948). The cones, which typically mature in 2 years, remain closed for many years while attached to the tree. Seeds can be released upon mechanical removal from the tree or, more typically, upon death of the tree or supporting branch. *Cupressus goveniana* ssp. *goveniana* is distinguished from its close relative *C. goveniana* ssp. *pigmaea* (pygmy or Mendocino cypress) by its much taller stature, the lack of a long, whip-like terminal shoot, and light to yellow-green rather than dark dull green foliage (Bartel 1993).

Like other closed-cone cypresses, *Cupressus goveniana* ssp. *goveniana* is a fire adapted species. It possesses cones which, after seed has matured, remain sealed and attached to the trees, typically until heat from fires breaks the cones' resinous seal and allows seeds to escape. Adequate sunlight and bare mineral soils are also needed by *C. goveniana* ssp. *goveniana* for seedling establishment; in areas with herbaceous cover seedling mortality is higher due to fungal infections (Vogl *et al.* 1988).

Only two natural stands of *Cupressus goveniana* ssp. *goveniana* are known to exist, although individuals can be found locally in cultivation. *Cupressus goveniana* ssp. *goveniana* is associated with *Pinus radiata, Pinus muricata,* and several taxa in the heath family (Ericaceae) (e.g., *Vaccinium, Gaultheria, Arctostaphylos*) on poorly drained, acidic, soils (Griffin and Critchfield 1976). The largest stand, referred to here as the Del Monte Forest stand, is near Huckleberry Hill on the western side of the Monterey Peninsula. This stand covers approximately 40 hectares (ha) (100 acres (ac)), with individuals scattered within a kilometer (km) (0.6 mile (mi)) of the main stand. Wolf and Wagener (1948) reported that patches of crowded, poorly developed individuals, referred to as "canes," were cut for posts, making it difficult to determine the original extent of the grove.

At least three fires have burned portions of the Del Monte Forest stand in the last 100 years. A large fire burned most of the stand in 1901 (Coleman 1905, and Dunning 1906, in Vogl *et al.* 1988). The northern portion of the stand apparently burned in 1959 (NDDB 1997). The most recent fire burned the south central portion of the population in 1987. In each case, regeneration of *C. goveniana* ssp. *goveniana* has occurred.

The Del Monte Forest stand is on lands owned by the Pebble Beach Company and the Del Monte Forest Foundation (DMFF). The purpose of the DMFF, originally established as the Del Monte Foundation in 1961 by the Pebble Beach Company, is to "acquire, accept, maintain, and manage lands in the Del Monte Forest which are dedicated to open space and greenbelt" (DMFF, *in litt.* 1992). A large portion of the Del Monte Forest stand is within a 34-ha (84-ac) area designated as the Samuel F.B. Morse Botanical Reserve (Morse Reserve) in the 1960s and donated to DMFF in 1976. In the early 1980s, development of the Poppy Hills Golf Course removed 840 trees of *C. goveniana* ssp. *goveniana* outside of the reserve and surrounded other small patches with fairways (G. Fryberger, Pebble Beach Company, pers. comm. 1992). The majority of the remaining portion of this stand is on lands owned by Pebble Beach Company that are designated as "forested open space" in the Huckleberry Hill Open Space area, through a conservation easement held by the DMFF. Scattered groups of trees that radiate out from this stand are located on Pebble Beach Company lands within their most recently proposed residential developments (EIP Associates 1995).

A second smaller stand of *Cupressus goveniana* ssp. *goveniana* 16 to 32 ha (40 to 80 ac) in size occurs 10 km (6 mi) to the south at Point Lobos State Reserve near Gibson Creek on a 60-ha (150-ac) parcel acquired by the CDPR in 1962. The very western edge of the stand is on lands recently purchased by the Big Sur Land Trust from a private owner. This parcel was to be transferred to the CDPR in 1997 (Big Sur Land Trust, *in litt.* 1997). In this stand, *C. goveniana* ssp. *goveniana* is associated with *Pinus radiata* and chaparral species (Griffin and Critchfield 1976; Vogl *et al.* 1988). Due to the physical inaccessibility of the Point Lobos stand and the Reserve's mandate to protect sensitive plant taxa, the Point Lobos stand exhibits fewer signs of human disturbance than the Del Monte Forest stand.

Despite measures taken to protect the *Cupressus goveniana* ssp. *goveniana* stand at the Del Monte Forest, such as establishing the Morse Reserve, the opportunities for maintaining a viable long-term population of this taxon may be compromised by the site's proximity to urbanization. Although the lands on which the majority of the remaining cypress grow will not be developed, the residential development that is occurring on all sides of the stand reduces the opportunity for the continuation of ecosystem processes, such as periodic fire, which are needed for stand regeneration. This species is threatened by habitat alteration due to the influence of continued urban development in Pebble Beach and to the disruption of natural fire cycles that are likely to result from fire suppression activities. In addition, stands of *Cupressus goveniana* var. *goveniana* at both locations have been invaded by aggressive alien species, including *Cortaderia jubata* (pampasgrass), *Genista monspessulana* (French broom), and *Erechtites* spp. (fireweeds) (Forest Maintenance Standard 1990; K. Gray, State Parks, pers. comm. 1997). Invasion of alien plants alters the composition of the plant community and may adversely affect *C. goveniana* ssp. *goveniana.*

Piperia yadonii (Yadon's piperia) was first collected by Leroy Abrams in 1925 in open pine forest near Pacific Grove. At that time, it was identified as *Piperia unalascensis*, a polymorphic, wide-ranging species in the western United States (Morgan and Ackerman 1990), although at least two naturalists who collected from the Monterey region in the 1920s (George Henry Grinnel and Leroy Abrams) noted the uniqueness of the plants from the Monterey area (Morgan and Ackerman 1990, Coleman 1995). In a recent treatment of the genus *Piperia,* Ackerman (1977) segregated out several long-spurred taxa from the *P. unalascensis* complex, but attempted no analysis of the short-spurred forms. Subsequently, Morgan and Ackerman (1990) segregated out two new taxa from the *P. unalascensis* complex. One of these, *P. yadonii,* was named after Vernal Yadon, previous Director of the Museum of Natural History in Pacific Grove, Monterey County.

Piperia yadonii is a slender perennial herb in the orchid family (Orchidaceae). Mature plants typically have two or three lanceolate to oblanceolate basal leaves 10 to 15 cm (4 to 6 in) long and 2 to 3 cm (0.8 to 1.2 in) wide. The single flowering stems are up to 50 cm (20 in) tall with flowers arranged in a dense narrow-cylindrical raceme. The flowers consist of three petal-like sepals and three petals (together referred to as tepals). The upper three tepals are green and white and the lower three white. The lowermost tepal is specialized into a lip that is narrowly triangular and is strongly decurved such that the tip nearly touches the spur of the flower (Morgan and Ackerman 1990). *Piperia yadonii* may occur with *P. elegans, P. elongata, P. michaelii,* and *P. transversa,* but is distinguished from them in flower by its shorter spur length, particular pattern of green and white floral markings, and its earlier flowering time (Morgan and Ackerman 1990, Coleman 1995).

As in other orchids, germination of *P. yadonii* seeds probably involves a symbiotic relationship with a fungus. Following germination, orchid seedlings typically grow below ground for one to several years before producing their first basal leaves. Plants may produce only vegetative growth for several years, before first producing flowers (Rasmussen 1995). In mature plants of *P. yadonii* the basal leaves typically emerge sometime after fall or winter rains and wither by May or June, when the plant produces a single flowering stem. Allen (1996) has observed that only a small percentage of the *P. yadonii* plants in a population may flower in any year. This is consistent with what is known of other orchid species (James Ackermann, Universidad de Puerto Rico, *in litt.* 1997). As in some other

plant taxa, individual orchids that flower in one year may not have the necessary energy reserves to flower in the following year, so size and flowering are not necessarily age-dependent (Wells 1981, Rasmussen 1995).

Piperia yadonii is found within Monterey pine forest and maritime chaparral communities in northern coastal Monterey County. Its center of distribution is the Monterey Peninsula where plants are found throughout the larger undeveloped tracts of Monterey pine forest. To the north, the range of *P. yadonii* extends to the Los Lomas area, near the border of Santa Cruz County (Allen 1996; Vern Yadon, Pacific Grove Museum of Natural History, *in litt.* 1997). Searches north into Santa Cruz County have uncovered little suitable habitat and no *P. yadonii* (Randall Morgan, biological consultant, pers. comm. 1996; Allen 1996), nor do regional herbaria contain collections from Santa Cruz County (R. Morgan, pers. comm. 1996). Since preparation of the proposed rule, *P. yadonii* has been found at one location about 25 km (15 mi) south of the Monterey Peninsula near Palo Colorado Canyon in maritime chaparral (Jeff Norman, biological consultant, *in litt.* 1995). Maritime chaparral is uncommon along this region of the Big Sur coastline, but a few scattered patches do occur south to Pfieffer Point, located about 40 km (25 mi) from the Peninsula (J. Norman, pers. comm. 1997). *P. yadonii* has been found only 6 to 10 km (4 to 6 mi) inland (Allen 1996; V. Yadon, *in litt.* 1997) despite searches of lands farther east (Allen 1996). Toro Regional Park, 16 km to 24 km (10 to 15 mi) inland, was searched and four unidentified *Piperia* were found, but the habitat was reported to not be similar to that favored by *P. yadonii* (Allen 1996).

Piperia yadonii has been found in Monterey pine forest with a herbaceous, sparse understory and in maritime chaparral along ridges where the shrubs, most often *Arctostaphylos hookeri* (Hooker's manzanita), are dwarfed and the soils shallow (Morgan and Ackerman 1990, Allen 1996). As in other orchid species, *P. yadonii* does not appear to be an early successional species but is able to colonize trails and roadbanks within the dwarf maritime chaparral or Monterey pine forest once a decade or more has passed and if light and moisture regimes are favorable (Allen 1996; V. Yadon, *in litt.* 1997).

The Pebble Beach Company funded intensive surveys for *Piperia yadonii*, focusing on the Monterey Peninsula in 1995, and beyond the Peninsula in western Monterey County in 1996. Approximately 84,000 *P. yadonii* plants on about 140 ha (350 ac), were counted at all known sites throughout the range of this species since 1990 (R. Morgan, *in litt.* 1992; Uribe and Associates 1993; J. Norman, *in litt.* 1995; Allen 1996; Jones and Stokes Assoc. 1996). Plants are often densely clustered, and may reach densities of 100 to 200 plants in a few square meters (10 to 20 plants in a few square feet) (Robert Hale, *in litt.* 1997). Because size and flowering are not always age-dependent, the age structure of these populations is not known.

During these surveys, the greatest concentrations of *Piperia yadonii*, approximately 57,000 plants or 67 percent of all known plants were found scattered throughout much of the remaining Monterey pine forest owned by the Pebble Beach Company and the Del Monte Forest Foundation on the Monterey Peninsula (Allen 1996). About 8,500 of these plants are in open space areas there (Allen 1996). Another 2,000 plants (2 percent of all known) occur on remnant patches of Monterey pine forest in parks and open space areas of Pacific Grove and Monterey (Allen 1996; Department of the Army, *in litt.* 1996; Jones and Stokes Assoc. 1996). Inland to the north, about 18,000 *P. yadonii* plants, (21 percent of all known plants) have been found on the chaparral covered ridges north of Prunedale (Allen 1996). About 8,000 of these are on lands that receive some protection at Manzanita County Park and The Nature Conservancy's Blohm Ranch; the remainder are on private lands that are not protected. South of the Peninsula about 7,500 plants have been found on CDPR properties at Pt. Lobos Ranch, on surrounding lands that are to be turned over to CDPR in the future (Big Sur Land Trust, *in litt.* 1997) and in a smaller parcel that is in private ownership.

Considering the current abundance of *Piperia yadonii* in the remaining large tracts of Monterey Forest, this species probably occurred throughout the Peninsula when Monterey pine forests were much more extensive. Many historic collections were made from the Pacific Grove area (R. Morgan, *in litt.* 1992), which has since been urbanized. Continued fragmentation and destruction of habitat due to urban and golf course development are currently the greatest threats to *P. yadonii*. Other threats include exclusion by alien species, roadside mowing, and potentially an increase in deer grazing of flowering stems.

Potentilla hickmanii (Hickman's potentilla) was originally collected by Alice E. Eastwood (1902) in 1900 "near the reservoir which supplies Pacific Grove, [Monterey County] California, along the road to Cypress Point." The reference to a reservoir could refer to Forest Lake in Pebble Beach but more likely refers to the Pacific Grove reservoir (Ferreira 1995). Eastwood (1902) described the species 2 years later, naming it after J. B. Hickman who was her guide on that collecting trip.

Potentilla hickmanii is a small perennial herb in the rose family (Rosaceae) that annually dies back to a woody taproot. The leaves are pinnately compound into generally six paired, palmately cleft leaflets each 2 to 8 mm (0.1 to 0.3 in) long and 1 to 3 mm (to 0.1 in) wide. Several reclining stems 5 to 45 cm (2 to 16 in) long support two to four branched cymes (flowering stems) each of which has fewer than 10 flowers. The flowers consist of 5 yellow obcordate petals 6 to 10 mm (0.2 to 1.0 in) long and 5 mm (0.2 in) wide, with typically 20 stamens and about 10 styles (Abrams 1944, Ertter 1993). *Potentilla hickmanii* is separated from two other potentillas that occur on the Monterey Peninsula (*P. anserina* var. *pacifica* and *P. glandulosa*) by a combination of its small stature, size and shape of leaflets, and color of the petals.

Only three historical locations for the plant are known, two in Monterey County and one in San Mateo County (NDDB 1997c). A collection was made by Ethel K. Crum in 1932, apparently in the vicinity of Eastwood's original collection on the Monterey Peninsula. Ferreira (1995) surveyed the area surrounding the Pacific Grove reservoir in 1992, but found no *Potentilla hickmanii* plants or suitable habitat for the species. An extant population is known from the western edge of the Monterey Peninsula on lands owned by Pebble Beach Company. This species was collected from one other location, at "Moss Beach" near Half Moon Bay, San Mateo County in 1905 by Katherine Brandegee and in 1933 by Mrs. E. C. Sutliffe (Ertter 1993). At the time the proposed rule was written this population was presumed extirpated, but it was rediscovered in 1995 by biologists from the California Department of Transportation (Caltrans) surveying for a highway project (R. Vonarb, Caltrans, *in litt.* 1995).

Potentilla hickmanii is currently known to be extant at one location in San Mateo County and one in Monterey County. On the Monterey Peninsula, *P. hickmanii* grows in an opening within Monterey pine forest. Loamy fine sandy soils support a meadow community of alien grasses and several introduced and native herbs. Twenty-four individuals of *P. hickmanii* were located during 1992 surveys (Ferreira 1995). In 1995, the site was surveyed on two occasions and no

more than 21 plants were found (Jones and Stokes Assoc. 1996). Sampling in a portion of this occurrence indicated that neither recruitment of new individuals nor mortality of existing individuals had occurred in the sampled area in the past 2 years (T. Morosco, University of California Berkeley, *in litt.* 1997). The San Mateo County population grows on grassland slopes on private lands. It was estimated to have between 2000 and 3000 individuals in 1995 and 1996 (R. Vonarb, *in litt.* 1995; T. Morosco *in litt.* 1997).

The Pebble Beach Company has maintained management responsibilities for the Monterey population, located in an open space area called Indian Village, although ownership of the land has been transferred to the Del Monte Forest Foundation. Indian Village is available for use by residents and has been developed as an outdoor recreation area. Although a fence was constructed in the 1970s to limit access by recreationists, the fenced area contained only a portion of the population, and recreation impacts continued through the mid 1990s (Ferreira 1995, Jones and Stokes Assoc. 1996). In 1996, the Pebble Beach Company installed additional fencing to protect this population from recreational activities (M. Zander, Zander and Associates, *in litt.* 1996). *Potentilla hickmanii* is currently threatened by a proposed residential development in the Del Monte Forest which could alter hydrology at the Monterey site (EIP Associates 1995). At both the Monterey and San Mateo sites invasive alien species may be competing with *P. hickmanii* (Ferreira 1995; Jones and Stokes Assoc. 1996; B. Ertter *in litt.* 1997). The extremely small number of individual plants remaining at the Monterey site also make *P. hickmanii* vulnerable to extirpation from random events, such as genetic drift, poor years of reproduction and tree fall.

Trifolium trichocalyx (Monterey clover) is a member of the pea family (Fabaceae). The genus *Trifolium* is well-represented in North America, with approximately 50 species recognized in California (Munz 1959). Members of this herbaceous genus are characterized by their palmately three-foliate leaves (hence the name *Trifolium*) and flowers in spheroid or oblong heads.

Trifolium trichocalyx was first collected by Amos A. Heller "in sandy pine woods about Pacific Grove" in 1903, and described by him the following year (Heller 1904). Laura F. McDermott (1910) considered the taxon a variety of *T. oliganthum* in her treatment of the genus, but this was not recognized in subsequent floras. Axelrod (1982) deferred to Gillett's suggestion that *T. trichocalyx* is a sporadic hybrid between *T. microcephalum* and *T. variegatum* and recommended removing it from the list of taxa considered Monterey endemics. This view was challenged by Vernal Yadon (*in litt.* 1983) who had grown *T. trichocalyx* and observed that it consistently produces up to seven seeds per pod, while both purported parents were two-seeded taxa. *Trifolium trichocalyx* has continued to be recognized as a distinct taxon by Abrams (1944), Munz (1959), Howitt and Howell (1964) and, most recently, Isely (1993).

Trifolium trichocalyx is a much-branched prostrate annual herb with leaflets that are obovate-cuneate, 0.4 to 1.2 cm (0.2 to 0.5 in) long, truncate or shallowly notched at the ends. The numerous flowers are clustered into heads subtended by a laciniate-toothed involucre. The calyces are 7 mm (0.3 in) long, toothed, and conspicuously pilose; the purple corollas scarcely equal the length of the calyx; the deciduous seed pods enclose up to seven seeds. The plant can be quite inconspicuous, as the prostrate branches may be only 3 to 4 cm (1.2 to 1.6 in) long. With favorable conditions, however, branches may reach a length of 20 to 30 cm (8 to 12 in) (Abrams 1944; V. Yadon, *in litt.* 1983). Branches from one large plant may spread through the forest litter and give the appearance of many plants. Of the four species of *Trifolium* growing on Huckleberry Hill, all except *T. trichocalyx* contain two seeds per pod.

Trifolium trichocalyx is known from only one area, Huckleberry Hill, covering approximately 16 ha (40 ac) (Ferreira 1995) on the Monterey Peninsula. The plant occurs in openings within Monterey pine forest on poorly drained soils consisting of coarse loamy sands. *Trifolium trichocalyx* appears to be a fire-follower, taking advantage of the reduced forest cover for the first few years after a fire, and then becoming scarce, persisting primarily as a seedbank in the soil, as shade and competition increase during recovery of the forest community. Heller's collection in 1903 was made 2 years after a fire in the area. Only scattered individuals were reported by Theodore Niehaus in 1973 and 1979 and by Yadon in 1980 in forest openings or edges (NDDB 1997d). One of these sites is presumed to have been extirpated when Poppy Hills Golf Course was developed in 1980; the other two are within the boundaries of the Morse Reserve.

Surveys for *Trifolium trichocalyx* were conducted in 1988. No plants were found at the three sites reported earlier by Niehaus and Yadon. However, several hundred to 1,000 plants were scattered in an 80-ha (200-ac) area that had burned in 1987, near Huckleberry Hill (M. Griggs, *in litt.* 1988; V. Yadon, *in litt.* 1992). During surveys conducted in 1996 of this burned area, two sites were located with a total of 22 plants (Jones and Stokes Assoc. 1996). A seedbank is expected to occur in the soil in those locations where the plants were found in 1988 (Forest Maintenance Standard 1990, Jones and Stokes Assoc. 1996).

Threats to the continued existence of *Trifolium trichocalyx* include alteration of natural fire cycles and a proposed development within the largest area known to support clover in 1988. It is also vulnerable to random events due to the small amount of its remaining habitat and the ephemeral nature of the plant's reappearance after fires.

Previous Federal Action

Federal government action on the five plants began as a result of section 12 of the Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. That report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that report, *Astragalus tener* var. *titi*, *Potentilla hickmanii*, and *Trifolium trichocalyx* were recommended for endangered status. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act, and of its intention to review the status of the plant taxa named therein. The above three taxa were included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** document. *Astragalus tener* var. *titi*, *Potentilla hickmanii*, and *Trifolium trichocalyx* were included in the June 16, 1976, **Federal Register** proposal.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period

was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the portion of the June 6, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Astragalus tener* var. *titi, Potentilla hickmanii*, and *Trifolium trichocalyx* as category-1 species. Category-1 species were taxa for which data in the Service's possession was sufficient to support proposals for listing. On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review (48 FR 53640); the plant notice was again revised September 27, 1985 (50 FR 39526). In both of these notices, *Astragalus tener* var. *titi, Potentilla hickmanii*, and *Trifolium trichocalyx* were included as category-2 species. Category-2 species were taxa for which data in the Service's possession indicated listing may be appropriate, but for which additional data on biological vulnerability and threats were needed to support a proposed rule. In the 1985 notice, *Cupressus goveniana* ssp. *goveniana* (as *Cupressus goveniana*) also was included for the first time as a category-2 species. On February 21, 1990 (55 FR 6184), the plant notice was again revised, and *Astragalus tener* var. *titi, Potentilla hickmanii*, and *Trifolium trichocalyx* were included as category-1 species, primarily because of additional survey information supplied by the NDDB, which indicated that the extremely limited populations of these taxa made them particularly vulnerable to impacts from a number of human activities and natural random events. Those three species also appeared as category-1 species in the 1993 notice of review (58 FR 51144). *Cupressus goveniana* ssp. *goveniana* was retained as a category-2 species in the 1990 and 1993 notices of review. On February 28, 1996, the Service published a Notice of Review in the **Federal Register** (61 FR 7596) that discontinued the designation of category-2 species as candidates.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Astragalus tener* var. *titi, Potentilla hickmanii*, and *Trifolium trichocalyx* because the 1975 Smithsonian report was accepted as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(I) of the Act. Annually, in October of 1984 through 1992, the Service found that the petitioned listing of *Astragalus tener* var. *titi, Potentilla hickmanii*, and *Trifolium trichocalyx* was warranted, but that the listing of these species was precluded by other pending proposals of higher priority. *Piperia yadonii* did not appear in earlier notices of review. *Piperia yadonii* first appeared as a candidate in the 1993 notice of review (58 FR 51144) in category-1. A reevaluation of the existing data on the status of *Cupressus goveniana* ssp. *goveniana* and threats to its continued existence provided sufficient information to propose to list this species as threatened.

A proposed rule to list *Astragalus tener* var. *titi, Piperia yadonii, Potentilla hickmanii* and *Trifolium trichocalyx* as endangered and *Cupressus goveniana* ssp. *goveniana* as threatened was published in the **Federal Register** on August 2, 1995 (60 FR 39326). Also included in this proposed rule was a proposal to list the black legless lizard (*Aniella pulchra nigra*) as endangered. Based upon new information received since publishing the proposed rule, the proposed listing of the black legless lizard has been withdrawn by the Service as announced in a separate **Federal Register** notice published concurrently with this final rule.

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

Summary of Comments and Recommendations

In the August 2, 1995, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to a final listing decision. Appropriate Federal and State agencies, County and local governments, scientific organizations, and other interested parties were contacted and requested to comment. During that comment period the Service received a request to hold a public hearing on the proposal. Due to the Federal moratorium on final listing actions, imposed on April 10, 1995, the public hearing could not be scheduled during the initial comment period, which closed on October 9, 1995. Once the moratorium was lifted on April 26, 1996, listing actions were prioritized and the public hearing was scheduled. The public hearing was held on August 20, 1996, and its associated public comment period ran from June 26, 1996 to August 30, 1996. During the hearing and public comment period substantial new information was submitted on the abundance of *Piperia yadonii*. To allow the public to comment on this new information and to permit submission of any new information that had become available on the other taxa in the package, the comment period was reopened for 30 days from April 2, 1997, to May 2, 1997. Newspaper notifications were published in the *Monterey Herald* and the *Santa Cruz Sentinel* during the initial comment period, and in the *Monterey Herald, Half Moon Bay Review*, and *Pacifica Tribune* for the 1997 comment period.

During the public comment periods and public hearing 20 agencies, groups, and individuals commented on the plant taxa included in the proposed rule, some of them multiple times. The majority of comments received concerned the proposal to list the black legless lizard; these comments are addressed in the concurrently published withdrawal for that taxon. Only those issues relevant to the listing of the five plant taxa are included in this final rule. Several comments contained significant data and information concerning the biology, ecology, range, and distribution of the subject taxa. This information was evaluated and incorporated into the final determination as appropriate. The 12 issues raised by the commenters that are relevant to the listing of the plant taxa and the Service's response to each are summarized as follows:

Issue 1: One commenter concluded that the Service had not provided a thorough rationale for why the potential

loss of habitat threatens the viability of the species. Specifically, the commenter suggested that insufficient evidence was presented on the effects of alteration of natural fire frequencies and of alien species on the proposed taxa.

Service Response: The Service has discussed the role of fire in the life history of *Cupressus goveniana* ssp. *goveniana* and *Trifolium trichocalyx* within this rule under the "Background" section and under Factor E of the "Summary of Factors Affecting the Species" section. With a large human population residing on the Peninsula, wildfires have been and will necessarily be suppressed to protect human life and property. Prescribed burns have been suggested as a management tool to replace wildfires at the Morse Reserve and Pt. Lobos State Reserve which support these taxa (Forest Maintenance Standard 1990; Jones and Stokes Assoc. 1996). While fire is desirable from a land management perspective, prescribed burns on Huckleberry Hill present a risk that is not currently accepted by surrounding residents and entities who authorize such activities (Forest Maintenance Standard 1990; R. Andrews, Pebble Beach Community Services District, pers. comm. 1997). With increased development close to the *Cupressus* groves, homeowner opposition to prescribed burns is likely to increase. The proximity of, and risk to, adjacent residences also will influence the manner in which burns would be implemented. For example, to facilitate control, vegetation may be crushed or chipped prior to burning or burns may be conducted in early spring, when moisture levels are high (Greenlee 1977, Green 1982). These methods, which may not mimic the fire regime under which the taxa evolved, can alter the ability of the vegetation community to regenerate. For example, cool season burns may not provide sufficient heat to crack seed coats and promote germination of some species, or conversely, early spring burns may be detrimental to herbaceous species if the seeds in the soil have already imbibed water when the fire occurs. The Service concludes that increasing urban development reduces the likelihood that fire will occur in a manner sufficient to ensure the continued viability of these taxa.

The invasive nature and competitive ability of the alien species, *Genista monspessulana, Cortaderia jubata, Carpobrotus edulis,* and alien grasses such as *Phalaris aquatica* (Harding grass) and *Lolium multiflorum* (Italian ryegrass) which threaten the taxa in this rule are well-documented (Mooney *et al.* 1986, Zedler and Scheid 1988). Documented links between encroachment by alien plant taxa and the disappearance of native California taxa in wildlands are also well-established in the literature. This issue is discussed in greater detail under factors A and E in the "Summary of Factors Affecting the Species" section.

Issue 2: Several commenters suggested that the Service has not given sufficient consideration to the regulatory mechanisms already in place to protect the proposed plants; one suggested that the Coastal Act already provides substantial protection for the taxa included in the rule that occur on Pebble Beach Company lands.

Service Response: The Service has analyzed available information and concluded that existing regulatory mechanisms, including the Coastal Act, have not been sufficient to adequately protect the taxa included in this rule. The discussion of existing regulatory mechanisms has been expanded since the proposed rule and is included under Factor D in the "Summary of Factors Affecting the Species" section.

Issue 3: Several commenters stated that the information the Service used in the proposed rule for *Piperia yadonii* was dated and incomplete and that the Service, therefore, was not relying on the best scientific information available. Two commenters suggested that the better our search methods and understanding of this species, the more of it we are likely to find; they concluded that the current population sizes for this species indicate that it is not in danger of extinction throughout a significant portion of its range.

Service Response: In preparing the proposed rule, the Service used the best information available on the distribution and abundance of *Piperia yadonii.* The information supplied by the Pebble Beach Company in 1992, when the preparation of the proposed rule began, estimated the population of *P. yadonii* in the Del Monte Forest to be about 400 plants (G. Fryberger, *in. litt.* 1992). The 1995 surveys, funded by the Pebble Beach Company, were not completed and made available to the Service before publication of the proposed rule in August 1995.

Data from the surveys in 1995 and 1996 support the range as stated in the proposed rule with the exception of the Lobos Ranch and Palo Colorado populations which represent a range extension south of the Monterey Peninsula. Regions to the north and east of the known range of this species have been searched without success and the appropriate dwarf maritime chaparral and Monterey pine forest habitats are absent or uncommon there (R. Morgan, pers. comm. 1996; Allen 1996). Additional colonies within the range of this species may be discovered on private lands, but large expanses of unsurveyed habitat with protected status and appropriate habitat do not exist. Those portions of Fort Ord identified for protection of natural resources are the largest protected tracts of land within the range of *P. yadonii.* Surveys have been conducted at Fort Ord and have located and identified *P. yadonii* in only one location with fewer than 50 plants (Jones and Stokes Assoc. 1996; Allen 1996). Fort Ord appears to have little of the stunted maritime chaparral habitat in which this species is found (D. Allen, Biological Consultant, pers. comm. 1997).

The 1995 and 1996 surveys revealed that population sizes in the proposed rule had been vastly underestimated because they were based on counts of flowering specimens. Although *P. yadonii* is now known to be more abundant than stated in the proposed rule, the Service's decision to list this species is based on significant threats from direct loss and fragmentation of its remaining habitat in the foreseeable future. The Service has considered all new information received during public comment periods in making this final determination and has incorporated it into this final rule.

Issue 4: Several commenters suggested that *Piperia yadonii* plants can be distinguished from other *Piperia* species with which it may occur only by their flowers; therefore, those population estimates based on counts of basal leaves may have overestimated the true population sizes of *P. yadonii* by including colonies of other *Piperia* species.

Service Response: The Service agrees that flowers are needed for a positive identification of *Piperia yadonii.* The surveys conducted in 1995 and 1996 relied primarily on counts of basal leaves for population estimates. In most populations, however, the surveyors caged plants when making initial counts of basal leaves and noted leaf characteristics if they appeared to differ from those of *P. yadonii.* Populations were revisited during June and July when *P. yadonii* is in flower to confirm identification. In the few cases where no flowering plants were found, the plants were not assigned to species; in cases where a mix of species was found the estimates were based on leaf characteristics and, in some cases, habitat type (Allen 1996). The principle surveyor was noted to be a careful observer (V Yadon, *in litt.* 1997). While acknowledging the potential for

overestimates, the Service has accepted the information and focused on comparative population size and status, rather than specific counts.

Issue 5: One commenter submitted the results of experimental transplantation of *Piperia yadonii*. The commenter suggested that there existed suitable habitat for *P. yadonii* that was not at carrying capacity and that transplantation and the dispersal of seeds to unoccupied sites ". . .offers a means of reducing the threat posed by development."

Service Response: The commenter submitted 1 year of data on the results of transplantation experiments on *Piperia yadonii*. Survival on four sites 10 months after early April transplanting ranged from 11 percent to 69 percent and averaged less than 50 percent. The proportion of transplanted plants flowering on these sites ranged from 0 to 7 percent. Of the 113 plants transplanted in October, 73 percent survived to the following February's monitoring date. Of these plants, 20 percent formed floral spikes (Allen 1997; M. Zander, *in litt.* 1997).

Two possible explanations exist for the absence of *Piperia yadonii* from areas of seemingly suitable habitat in the Del Monte Forest. Either a lack of seed dispersal has limited the ability of *P. yadonii* to colonize these areas or the habitat is not suitable for the establishment and maintenance of a viable population of this species. *P. yadonii* has light-weight, wind-dispersed seeds, capable of long-distance dispersal, making the former explanation less likely, although still possible. In the latter case, many habitats which may initially appear suitable may not be able to support a viable population of *Piperia yadonii* over the range of environmental conditions that can be expected to occur through time. For example, an introduced population that may persist during a period of normal rainfall may perish during an extended drought. To demonstrate that an area of currently unoccupied habitat is capable of supporting a viable self-sustaining population of *Piperia yadonii* could take several decades. The population would have to persist through the range of environmental conditions common to the region where it occurs. The Service is not aware of any evidence that demonstrates the existence of unoccupied habitat suitable for the growth and persistence of any of the species in this rule, including *P. yadonii*. The Service does not accept transplantation or manual seed dispersal as alternatives to protecting naturally occurring populations with proven ability to persist through the environmental extremes.

Issue 6: One commenter concluded that the discovery of the population of *Potentilla hickmanii* in San Mateo County raises the potential that other populations may be discovered and that the Service's listing is therefore ". . .premature and. . .unwarranted." The commenter also contends that the Service must now conduct further surveys for this species to determine if listing is warranted.

Service Response: The discovery of the population in San Mateo County does not substantially change the status of this species. *Potentilla hickmanii* is known from only two locations. The San Mateo County site that was recently discovered matches the general location of historical collections from the 1930s. Following the discovery of this population, intensive surveys have been conducted for this species from Pillar Point near Half Moon Bay to Mori Point near Pacifica, San Mateo County. No additional populations have been found (T. Morosco, *in litt.* 1997). In 1990, Ferreira (1995) searched the historical collection location near the Pacific Grove reservoir without success. As discussed under Factor A in the "Summary of Factors Affecting the Species" section, the Monterey population has fewer than 25 plants and is potentially threatened by hydrologic changes due to proposed development. The Service is neither required nor funded to conduct further surveys for this species, and concludes that the best available information is sufficient to support the listing of this species under the Act.

Issue 7: One commenter concluded that listing will not provide any additional protection to *Trifolium trichocalyx* because most of the seedbank of this species is located in the Huckleberry Hill Open Space area and the Morse Reserve. The commenter also concluded that the Service has ignored existing regulatory mechanisms which protect most of the seedbank of *T. trichocalyx*.

Service Response: In 1987, a wildfire on Huckleberry Hill burned the central and southern portions of the habitat of *Trifolium trichocalyx*. Following that fire, the largest colony of *T. trichocalyx* was found on lands owned by the Pebble Beach Company outside of and within the southern border of the Huckleberry Hill Open Space area (maps by M. Griggs, *in litt.* 1988; V. Yadon, *in litt.* 1988). Much of this site is now within the boundaries of one of the residential subdivisions proposed by the Pebble Beach Company (EIP Associates 1995). A comparison of the maps of occupied habitat submitted to the California Department of Fish and Game in 1988 (maps by M. Griggs, *in litt.* 1988; V. Yadon, *in litt.* 1988) to the proposed footprint of the proposed development (EIP Associates 1995), show that existing lots and a 30-m (100-ft) setback will extend over about one-quarter of the clover habitat occupied in 1988 (Jones and Stokes Assoc. 1996). Other maps produced in 1988 and used in the environmental document, however, indicate that the lots and setback extend up to, but do not cover, habitat occupied in 1988 (EIP Associates 1995). As proposed in the environmental document, the habitat containing the seedbank outside of the lot boundaries and setback, would be designated forested open space (EIP Associates 1995). The Service believes that existing and proposed residential development either adjacent to, or partially over, the existing clover seedbank substantially diminishes the potential for the use of fire as a management tool to maintain this species. The Service discusses existing regulatory mechanisms in more detail under Factor D of the "Summary of Factors Affecting the Species" section.

Issue 8: Two commenters concluded that *Cupressus goveniana* ssp. *goveniana* is already protected due to its inclusion in the Huckleberry Hill Open Space and the Morse Botanical Reserve and is therefore unlikely to become endangered in the foreseeable future. One commenter stated that it is likely that fire would be used as a management tool in the future in Del Monte Forest.

Service Response: As discussed in the "Background" section, *Cupressus goveniana* ssp. *goveniana* is adapted to regenerate after a fire. While some regeneration following mechanical clearing has occurred along a fire road (EIP Associates 1995; Patterson *et al.* 1995), periodic fire is the most effective and efficient method of promoting forest regeneration. The lands on which most of the cypress grows are included in the Morse Botanical Reserve and, therefore, will not be developed. However, the periodic fires that create conditions necessary for regeneration of the grove, are less likely to occur as residential development encroaches on the Reserve and the Huckleberry Hill Open Space area. At least three of the subdivisions proposed for development by the Pebble Beach Company are to be located within 300 m (984 ft) of the Morse Reserve. One of these proposed subdivisions, would be directly adjacent to the *Cupressus* stands in the Morse Reserve and *C. goveniana* ssp. *goveniana* occurs within its northern boundary (EIP Associates

1995). The 1990 Forest Maintenance Standard prepared for the Huckleberry Hill Open Space stated that agencies which have the authority to permit prescribed burns in the area recommended against it. As with *Trifolium trichocalyx* (see Issue 7) the Service concludes that existing and proposed adjacent residential development substantially diminish the potential for the use of fire as a management tool to maintain this species. Existing regulatory mechanisms are discussed in more detail under Factor D of the "Summary of Factors Affecting the Species" section.

Issue 9: One commenter concluded that the Service should designate critical habitat and disputed the Service's reasoning that to do so would not be prudent due to the potential for vandalism and the lack of benefit. The commenter suggested that vandals interested in the plants' locations could get them from the Service by requesting them under the Freedom of Information Act (FOIA).

Service Response: The Service has concluded that designating critical habitat for these species is not prudent for the reasons discussed in the "Critical Habitat" section of this rule. Critical habitat designation primarily affects Federal activities on lands on which there is, or is likely to be, some involvement by a Federal agency. All but one of these plants occur only on non-Federal lands where there is no foreseeable Federal involvement. A few small populations of *Piperia yadonii* occur on Federal land at the Department of the Army's Presidio of Monterey, at the Naval Post-Graduate School in Monterey, and on the former Fort Ord. The site on the former Fort Ord is to be transferred to a local management entity, permanently protected, and managed for the conservation of plants and wildlife.

There may be some small benefit that results from public notification if critical habitat is designated, but this benefit is largely duplicative with the public notification that is part of the listing process itself. Moreover, any benefit that results from public notification must be weighed against the potential for increasing the degree of threat to the species and also against the potential for making cooperative recovery efforts more difficult. The Service also is concerned about the potential for overcollecting of *Piperia yadonii* if critical habitat descriptions and precise maps of plant locations were to be published in the **Federal Register**. An international trade exists in orchid species and the attractiveness of *P. yadonii* to horticulturalists may be enhanced by its listing as an endangered species. At its present population size on the Peninsula, an increase in collection is not likely to substantially affect this species in itself, but combined with further expected habitat loss and fragmentation, the collection of flowering individuals could be deleterious to this species. By publishing maps identifying the precise locations of this plant species, the Service could be contributing to its decline. Although these maps may be available through a FOIA request, anyone intending to vandalize these species or their habitat is unlikely to request this information in such a public and documented way. The Service believes that any small benefit from critical habitat designation is outweighed by the increased threat to *Piperia yadonii* species from overcollection and vandalism. A more detailed discussion of all aspects of critical habitat discussion for these five taxa is provided in the "Critical Habitat" section.

Issue 10: One commenter stated that the Service has violated the Administrative Procedures Act by not notifying the County of San Mateo of the proposed rule, since a population of *Potentilla hickmanii* occurs in San Mateo County.

Service Response: At the time the proposed rule was prepared, the population of *Potentilla hickmanii* in San Mateo County had not been discovered (R. Vonarb, *in litt.* 1995). Since none of the species in the rule were known to be extant in any county other than Monterey, no additional county governments were included on the address list. The County of San Mateo was included in the notification provided during the most recent comment period.

Issue 11: One commenter requested that the Service prepare an environmental impact report (EIR) for this listing action.

Service response: Because the Service is a Federal agency its actions are regulated by the National Environmental Policy Act (NEPA), which would require preparation of an Environmental Impact Statement (EIS). This action is not regulated under the California Environmental Quality Act (CEQA) which would require preparation of an EIR. The Service has previously determined (48 FR 49244) that rules issued pursuant to section 4(a) of the Act do not require the preparation of an EIS.

Issue 12: One commenter was concerned that urban and golf course development and recreational and military activities would be curtailed by the listing of these species because these activities were identified as threats in the proposed rule.

Service Response: In some cases, the activities described above may be modified if they are likely to adversely affect a federally listed species. Federal listing provides some protection to plant species on Federal lands, and elsewhere if a Federal permit or authorization is required for a proposed action. Federal listing also provides a significant degree of recognition by State and local agencies and private landowners which may result in increased protection. Of the activities addressed above, those of the military would require consultation with the Service to ensure that military activities would not jeopardize the continued existence of listed taxa. Greater detail on the prohibitions and protections afforded listed plant species is found in the "Available Conservation Measures" section.

Peer Review

In accordance with policy promulgated July 1, 1994 (59 FR 34270), the Service solicited the expert opinions of independent specialists regarding pertinent scientific or commercial data and assumptions relating to the population biology and supportive biological and ecological information for the species under consideration for listing. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists.

Three peer reviewers were asked specific questions relating to the conclusions and assumptions included in the proposal for *Cupressus goveniana* ssp. *goveniana, Piperia yadonii,* and *Potentilla hickmanii*. Their comments have been incorporated into the final rule as appropriate and are summarized below.

One reviewer commented that most *Piperia* species are pollinated by moths. The reviewer hypothesized that the species has a mixed breeding system that involves both outcrossing and inbreeding (either through self-fertilization or breeding with neighboring plants that are likely to be related). The reviewer agreed that because *Piperia* have wind-dispersed seed, physical obstructions, such as houses, may affect seed dispersal. The reviewer suggested that the effects of development and habitat fragmentation on the pollinators of *Piperia yadonii* may be of greater concern than the effects on seed dispersal or germination, particularly if the species is primarily pollinated by insects of restricted distribution. The same reviewer also

concluded that knowledge of the partitioning of genetic variation in *Piperia yadonii* could influence the conservation strategy for this taxon. Recent research results suggest that widespread tropical orchid species have much of their genetic variation within populations and fewer differences between populations, while in outcrossing species with restricted distributions gene flow may be similarly restricted and thus the genetic variability found in one population may differ substantially from that of another. If this is true in the genus *Piperia*, then species with restricted distributions, such as *P. yadonii*, would be more likely to differ genetically between populations. Therefore, to preserve the variability found within the species, as many populations as possible would need to be preserved.

Both reviewers of the *Piperia* information agreed that the habitat information provided by Allen (1997) was consistent with what they know of the species and genus. Mowing of flowering stalks and herbivory by deer were threats discussed by one reviewer.

The reviewer who commented on *Cupressus goveniana* ssp. *goveniana* agreed with the Service's conclusion that changes in the fire cycle were a threat to this taxon. The reviewer noted that opposition to prescribed burning in the Del Monte Forest still exists, although less so than in the past. The reviewer noted that vegetation removal along fire roads in the *Cupressus* stands on the Peninsula has been a problem and that erosion has increased due to fire road construction and maintenance.

Two reviewers commented on the reproductive biology of *Potentilla hickmanii;* one reviewer concluded that the species was self-compatible while the other reviewer noted that self-pollinated plants in a recent controlled experiment did not produce seed. Very few potential pollinating insects have been noted on *P. hickmanii*, despite focused observations by one of the reviewers. One reviewer specifically noted that seed set is generally low. One reviewer responded to the Service's query about distribution of this species by providing information on recent searches that have been conducted specifically for *P. hickmanii*. No additional populations have been located, and very few unsearched areas that may have appropriate habitat remain to be searched. Both reviewers agreed that nonnative species are a threat to this species at both locations where it is known to occur.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus tener* Gray var. *titi* (Eastw.) Barneby (coastal dunes milk-vetch), *Cupressus goveniana* Gord. ssp. *goveniana* (Gowen cypress), *Piperia yadonii* Morgan & Ackerman (Yadon's piperia), *Potentilla hickmanii* Eastw. (Hickman's potentilla), and *Trifolium trichocalyx* Heller (Monterey clover) are as follows:

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

Two of the plant taxa, *Astragalus tener* var. *titi* and *Trifolium trichocalyx*, occur only on the Monterey Peninsula. The largest of the two *Cupressus goveniana* ssp. *goveniana* stands occurs on the Monterey Peninsula, as does one of only two populations of *Potentilla hickmanii*. The Monterey Peninsula is also the center of distribution of, and supports the largest concentration of, *Piperia yadonii*. Habitat for all five plant taxa has been altered, destroyed, or fragmented by residential development and conversion to golf courses and other recreational facilities.

Recent estimates of the loss of Monterey pine forest in California indicate that 40 percent (Huffman and Assoc. 1994) to 50 percent (Jones and Stokes Assoc. 1994a) of the Monterey pine forest once found in the Monterey region has been eliminated. On the Monterey Peninsula itself, the proportion destroyed is much greater; on those marine terraces and old dune soils that underlie most of the Peninsula, less than 20 percent of the historical Monterey pine forest is estimated to remain, much of it in fragmented and increasingly isolated stands (Jones and Stokes Assoc. 1994a). The Pebble Beach Company's lot development program includes proposed construction of 15 residential subdivisions, the Del Monte Forest's 8th 18-hole golf course, and associated recreational facilities on 277 ha (685 ac). This development would eliminate or degrade 165 ha (412 ac) of Monterey pine forest and associated maritime chaparral habitat on the Peninsula, including the Peninsula's second largest contiguous block of forest habitat (EIP Associates 1995). Most populations of each species in this rule occur within this remnant block of forest or closely associated meadow and terrace habitats. Habitat loss, fragmentation, and alteration resulting from previous and proposed developments pose significant threats to all five plant taxa in this rule.

Habitat fragmentation, by reducing native vegetation to "islands" within a matrix of roads, residences, and golf courses, leads to population declines and extirpations in several ways. As habitats are reduced to smaller parcels, natural ecosystem processes that act over large areas, such as hydrologic or fire regimes, are altered. The edges of habitat "islands" and the species within them may experience changes in light level, wind velocity (leading to blowdown of trees), moisture availability and an increase in alien species. When the habitat fragments are small, these "edge effects" may influence the entire remnant habitat. As species composition of these remnant habitats change, pollination and herbivory may be affected (Harris and Silva-Lopez 1992). Other influences from the surrounding environments, such as drifting of pesticides, trampling by humans, dumping of yard waste, and cutting of vegetation for fire control, also can have significant deleterious effects on the survival of native species.

Astragalus tener var. *titi* is believed extirpated in San Diego and Los Angeles counties due to habitat destruction. The only known occurrence is composed of eleven colonies, bisected by two roads, a golf green, and an 8-foot wide horse trail on the Monterey Peninsula. Development of the marine terrace habitat of this species has led to actual and potential problems with invasive alien species, trampling, and potential genetic changes, discussed under Factor E.

Cupressus goveniana ssp. *goveniana* is restricted to only two sites in western Monterey County. The occurrence on the Monterey Peninsula is located in the Morse Botanical Reserve and Huckleberry Hill Open Space area. As development has surrounded this location, the edges and outlying stands of this occurrence have been eliminated or diminished. For example, portions of this occurrence were lost during construction of the Poppy Hills golf course in the 1980s (J. Vandevere, California Native Plant Society (CNPS), *in litt.* 1992; G. Fryberger, pers. comm. 1992). Trees planted as mitigation for that loss and a small stand of naturally occurring *C. goveniana* ssp. *goveniana* and *Pinus muricata* were left in a 19.5-ac habitat patch of Monterey pine forest and chaparral, bounded by golf green.

As proposed for the most recent subdivision and development, this site would be converted to a 21-lot residential area, eliminating most of the naturally occurring cypress and leaving the remaining cypress in a portion of 2.8 ha (7 ac) of Forested Open Space bounded by roads, a golf green and houses (EIP Assoc. 1995). At least three of the proposed subdivisions are within 300 m (1000 ft) of the *C. goveniana* ssp. *goveniana* stands in the Morse Reserve and one proposed residential development abuts the Reserve's southwest corner (EIP Assoc. 1995). The proximity of these residential areas diminishes the opportunity to use prescribed fire as a management tool within the reserve. In addition, due to concern about potential wildfire, 12-ft wide fire roads have been maintained throughout the Reserve and Huckleberry Hill Open Space, removing individual *Cupressus* trees and causing erosion in some places (Forest Maintenance Standard 1990, V. Yadon *in litt.* 1997). These fire roads provide a suitable path for alien plants to enter and spread through the stands.

Potentilla hickmanii on the Monterey Peninsula is known from one occurrence of about 25 plants that grow in a meadow area designated as open space and used for recreation. In the 1970s, habitat occupied by *P. hickmanii* was lost and degraded by fill brought in for a ball field (Ferreira 1995); habitat trampling during recreational activities was noted as recently as 1995 (Jones and Stokes Assoc. 1996). In 1996, the Pebble Beach Company built an additional wood fence to exclude recreational activities from the remainder of the population (M. Zander, *in litt.* 1996). Currently, development of an 18-ac, 21-lot residential subdivision is proposed in Monterey pine forest within 100 m (330 ft) of the occurrence (EIP Associates 1995). This subdivision could negatively affect *P. hickmanii* both by increasing the amount of human use in the area and by altering the hydrology of the site; a small watercourse and freshwater marsh that likely influence the meadow habitat of *P. hickmanii* are located about 400 m (1300 ft) upslope from the occurrence and are within the proposed lot development area. Mitigation proposed to reduce this threat is the elimination of the three lots that cover and border the marsh and riparian areas (EIP Associates 1995). Nevertheless, runoff into the meadow may be affected by upslope development.

The Monterey Peninsula appears to be the center of distribution of *Piperia yadonii*. The Peninsula provides the greatest amount of remaining contiguous habitat and supports about 70 percent of known plants. The Del Monte Forest includes over half (73 ha (184 ac)) of the acreage estimated to still be extant for this species (EIP Associates 1995, Allen 1996). Based on the distribution of plants found in remaining Monterey pine forest, historical collections from Pacific Grove, and the amount of Monterey Pine forest which the Peninsula historically supported, the distribution of *P. yadonii* today is likely only a fraction of the historical extent of this species on the Peninsula. In the habitat that remains, *P. yadonii* is found in 13 of the proposed subdivisions. The 245-ac site of the proposed golf course supports about 16,000 individuals of this species and is the second largest contiguous stand of Monterey pine forest left on the Peninsula. The development currently proposed by the Pebble Beach Company would result in the loss or alteration of habitat supporting about 46,000 plants of *Piperia yadonii* on about 60 ha (149 ac) (EIP Associates 1995). This is about 80 percent of known plants on the Peninsula.

Including the 7,500 plants in the Huckleberry Hill Reserve (Richard Nichols, EIP Associates, pers. comm. 1997), about 10,800 plants of *Piperia yadonii* would fall within proposed forested open space (EIP Associates 1995). Other open space areas are located at the ends or borders of the proposed subdivisions or in some cases are encircled by the proposed lots. The effects of habitat fragmentation are likely to result in the eventual extirpation of colonies in these areas. In the nearby La Mesa housing development, for example, *Genista monspessulana*, an alien shrub, has invaded and is expected to engulf remnant habitats that support *Piperia yadonii* (Uribe & Assoc. 1993). Trampling by recreationists is a noted problem in remnant habitats that support *P. yadonii* at two city parks (D. Allen, pers. comm. 1997). Mowing for roadside fire control, which shears off the flowering stalks of *P. yadonii*, thereby preventing reproduction, also occurs in remnant open space habitats on the Peninsula (V. Yadon, *in litt.* 1997).

Beyond the Monterey Peninsula, over 60 percent of the known *Piperia yadonii* plants are on privately owned lands without protection, most of these in the Prunedale area. Two residential developments of over 16 ha (40 ac), each of which support potential maritime chaparral habitat, have been approved in this area in the last 2 years (L. Osorio, Monterey County Planning and Building Inspection, pers. comm. 1997). A third property, known to support several thousand *P. yadonii*, has been subdivided, but construction has not yet begun (M. Silberstein, Elkhorn Slough Foundation, pers. comm. 1997).

Trifolium trichocalyx is known only from Monterey pine forest on the Monterey Peninsula. Because this species appears to persist primarily as a seedbank until fire causes a flush of establishment, only a few colonies of living plants have been seen recently within and south of the Huckleberry Hill Open Space area in a region that burned in 1987 (Jones and Stokes Assoc. 1996). Of locations mapped for this species since the mid-1980s, about one-half of the area where plants have been recorded is in the Huckleberry Hill Open Space area and Morse Reserve, and approximately one-half occurs to the south and east. The mapped location of one colony is now a golf green (Ferreira 1995). The development lots and vegetation clearance zones for one of the proposed subdivisions appear to extend over a part of the largest occurrence mapped after the 1987 fire (Yadon *in litt.* 1988, Jones and Stokes Assoc. 1996), although other documents depict the lots adjacent to, but not over, previously mapped occupied habitat (EIP Associates 1995, M. Zander, *in litt.* 1996). In either case, the construction of residences over or directly adjacent to this occurrence is likely to preclude the use of fire as a management tool to promote its continued existence in the future.

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

Overutilization is not currently known to be a factor for the five plant taxa, but unrestricted collecting for horticultural purposes or excessive visits by individuals interested in seeing rare plants is a potential threat to these taxa. *Piperia yadonii*, like many other orchids and showy-flowered monocots, may be particularly vulnerable to collecting by amateur and professional horticulturalists due to the plant's unusual flower and its tuberous growth habitat which increases the ease with which it can be moved.

Vandalism is a potential threat for *Potentilla hickmanii* and *Astragalus tener* var. *titi*. The sites that these plants inhabit could be easily vandalized, resulting in the destruction of a significant portion of the population. The sites where *A. tener* var. *titi* exist are small and easily accessible, increasing their susceptibility to destruction.

C. Disease or Predation

Disease is not known to be a factor affecting the five plant taxa being proposed as endangered. Several references discuss diseases that affect cypresses (Peterson 1967, Wagener 1948). However, diseases, such as the oak root fungus (*Armillariella mellea*) and the canker-producing strain of *Cornyeum*, primarily seem to attack cypresses planted outside of their native range and in nursery settings (Wagener 1948). No signs of disease or predation have been noted by biologists familiar with the two *Cupressus goveniana* ssp. *goveniana* groves (J. Griffin, Hastings Natural History Reservation, pers. comm. 1992; V. Yadon, pers. comm. 1992).

Increased predation (herbivory) by deer due to an elevated deer population on the Peninsula is a potential threat to *Piperia yadonii*. During surveys in 1995 and 1996 a sample of plants both on and off of the Peninsula were placed under cages to protect them from large herbivores. About 13 percent of the caged plants flowered, while in unprotected plants only about 2 percent could be found with flowering stems (Allen 1996), a reduction of 85 percent. Severe herbivory of leaves, also likely from deer, has been noted as well (V. Yadon, *in litt.* 1997). Although the Service is not aware of any quantitative data on deer populations on the Peninsula, anecdotal evidence, such as sightings and reports of health, suggest that the number of deer on the Peninsula is high (T. Palmisano, California Department of Fish and Game (CDFG), pers. comm. 1997; Mary Ann Matthews, CNPS, *in litt.* 1996; D. Steeck, USFWS, pers. obs. 1996). If the loss of 85 percent of flowering stems calculated by Allen (1996) is close to actual herbivory rates on the Peninsula, predation could have a substantial effect on the reproductive success of the species, particularly as populations are reduced by large scale habitat loss and fragmentation due to development.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms that may provide some protection for taxa in this rule include—(1) the California Endangered Species Act (CESA); (2) the California Environmental Quality Act (CEQA); (3) the California Coastal Act; and (3) local land use laws, regulations, and policies.

Under the CESA (California Fish and Game Code section 2050 *et seq.*) and the Native Plant Protection Act (California Fish and Game Code section 1900 *et seq.*), the California Fish and Game Commission has listed *Astragalus tener* var. *titi*, *Potentilla hickmanii*, and *Trifolium trichocalyx* as endangered. *Piperia yadonii* and *Cupressus goveniana* ssp. *goveniana* are on List 1B of the CNPS Inventory (Skinner and Pavlik 1994), indicating that, in accordance with section 1901 of the CDFG Code, they are eligible for State listing. Although the CESA prohibits the "take" of State-listed plants (section 1908 and section 2080) not all projects comply and the law is not always enforced. California Senate Bill 879, passed in 1997 and effective January 1, 1998, requires individuals to obtain a section 2081(b) permit from CDFG to take a listed species incidental to otherwise lawful activities, and requires that all impacts be fully mitigated and all mitigation measures be capable of successful implementation.

These requirements have not been tested and several years will be required to evaluate their effectiveness.

The CEQA requires a full public disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with other agencies concerned with resources affected by the project. Required biological surveys are not always adequate to identify sensitive species, however. For example, in the northern portion of the range of *Piperia yadonii* a 40-acre residential development was recently approved in an area that contains maritime chaparral habitat and is located within 5 miles of a known site of *P. yadonii*. The biological survey was conducted in September 1995, when no above-ground parts of *P. yadonii* are present. When sensitive species are identified, proposed mitigation for significant impacts often involves transplantation of sensitive plants (EIP Associates 1995) which has poor success rates (Fiedler 1991, Allen 1994, M. Zander, *in litt.* 1997). Furthermore, when the effects of a proposed project cannot be mitigated to a level of insignificance, the County lead agency may still cite overriding considerations and approve the project.

All of the taxa in this rule occur, in part, in that portion of the Monterey Peninsula included in the California Coastal Zone. The Del Monte Forest Land Use Plan of 1984 (Del Monte Forest LUP) was developed to comply with the Coastal Act's requirement that all counties prepare a plan for those portions of the Coastal Zone within their jurisdiction. Once the Del Monte Forest LUP was certified by the Coastal Commission, development permits within the Del Monte Forest Coastal Zone became the responsibility of the County of Monterey. The County planning process does not appear to be implemented in a manner that will maintain the standards developed in the Del Monte Forest LUP, in some cases. For example, the Coastal Act defines Environmentally Sensitive Habitat Areas (ESHAs) as "...any area in which plant or animal life or their habitats are either rare or especially valuable...and which could be easily disturbed or degraded by human activities and developments." County policy identifies ESHAs as those identified in the 1984 LUP. Because *Piperia yadonii* was not recognized taxonomically in 1984, its location in the Del Monte Forest is not addressed as an ESHA in the recent County environmental impact report for the Pebble Beach Company's proposed development (EIP Associates 1995). It therefore does not receive the protections afforded by the Coastal Act (EIP Associates 1995).

Sites which support the other species in this rule, *Cupressus goveniana* ssp. *goveniana*, *Piperia hickmanii*, part of the occurrence of *Trifolium trichocalyx* and *Astragalus tener* var. *titi*, were designated ESHAs in the Del Monte Forest LUP. The LUP and appended Management Plan for Del Monte Forest Open Space Property specifies that these sites will remain in undeveloped open space and will be managed to protect the sensitive plant species which occur there. In managing these areas, the Pebble Beach Company has constructed fencing around part of the *P. hickmanni* and *A. tener* var. *titi* occurrences and has a program for control or eradication of alien species within those ESHAs under their management. The DMFF, which manages the Morse Reserve and Huckleberry Hill Open Space area, also has a control program for alien species. Despite these protections, adjacent areas identified for development have negatively affected, and likely will continue to, affect these areas. For example, the *C. goveniana* ssp. *goveniana* stands that extended outside the boundaries of the Morse Reserve were removed during the development of Poppy Hills golf course, and wetlands upslope from the *Potentilla hickmanni* occurrence are likely to be influenced by a proposed housing development (EIP Associates 1995). While the Coastal Act and resulting Del Monte Forest LUP provide some protection for the occurrences of these plant taxa located in the Coastal Zone, the Service

concludes that it is not adequate to preclude the need to list these taxa at this time.

A management plan for Point Lobos State Reserve states that the major effort within the Reserve will be "management toward the pristine state, that is, the state the ecosystem(s) would have achieved if European man had not interfered," but also to provide limited public access to the *Cupressus goveniana* ssp. *goveniana* area (CDPR 1979). The stand is currently protected from human disturbance by virtue of its isolation. With surrounding parcels to be transferred to the Reserve over the next decade, more active management of the area, particularly prescribed burning, is likely (K. Gray, pers. comm. 1997).

The Service concludes that existing regulatory mechanisms have provided some protection for these taxa, but the implementation of the regulations has not been adequate to preclude the need to list these taxa.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

Alien plant taxa threaten or are a potential threat to four of the taxa included in this rule. Two of the five plant taxa occur in meadow habitat containing a high percentage of alien plants. Along 17-Mile Drive, *Astragalus tener* var. *titi* occurs with the alien *Plantago coronopus* (cut-leaf plantain) and *Carpobrotus edulis*. *Carpobrotus edulis*, in particular, spreads rapidly and competes aggressively with native species for space. The Pebble Beach Company has an active *C. edulis* eradication program in, and adjacent to, the exclosure on the ocean side of 17-Mile Drive (M. Zander, *in litt.* 1997). However, *C. edulis* has been planted and is being maintained within a few feet of the unfenced portion of the habitat of *A. tener* var. *titi* on the inland side of 17-Mile Drive owned by the Monterey Peninsula Country Club (Zander 1996). *Plantago coronopus*, a prolific seeder, appears to be crowding out native species on both sides of 17-Mile Drive (Ferreira 1995).

Both populations of *Potentilla hickmanii* may be threatened by alien species. The population on the Monterey Peninsula occurs at Indian Village where Ferreira (1995) noted four alien grass taxa associated with it: *Aira caryophylla*, *Bromus mollis*, *Festuca arundinacea*, and *Lolium multiflorum*. The *Festuca* may have been introduced in a "meadow mix" used on adjacent fairways; its stature and invasiveness appear to compete with *P. hickmanii*. *Plantago coronopus*, also an alien, is present at this site and may be competing with *P. hickmanii*. Alien grasses, such as *Phalaris aquatica*, are also found at the San Mateo site, and *Genista monspessulana*, an invasive alien shrub, occurs there on the surrounding slopes (T. Morosco, *in litt.* 1997). At this location *P. hickmanii* is reported to occur in greatest concentrations in those areas that support the most intact native habitats with the fewest annual grasses (B. Ertter, *in litt.* 1997); whether lower densities elsewhere are due to competition from annual grasses has not yet been explored.

Cortaderia jubata (pampasgrass) and *Genista monspessulana* (French broom) are two other alien plant taxa that invade forests and meadows on the Monterey Peninsula. The Pebble Beach Company has an on-going eradication program for these two taxa in the Huckleberry Hill area adjacent to *Cupressus goveniana* ssp. *goveniana*. However, numerous fire roads provide open habitat for these invasive taxa and it is unlikely that they will ever be completely eradicated from the area. An extensive stand of *Genista* has been mapped adjacent to the grove of *C. goveniana* ssp. *goveniana* at Pt. Lobos Reserve (Patterson *et al.* 1995), where it may interfere with stand regeneration in the future (K. Gray, pers. comm. 1997).

Fire plays an important role in the regeneration of all cypress taxa (Vogl *et al.* 1988). Alteration of the natural fire cycle may negatively affect regeneration of *Cupressus goveniana* ssp. *goveniana*. Fire is essential since it opens cones that otherwise remain unopened on the trees, and it creates conditions appropriate for seedling establishment (Vogl *et al.* 1988). Prescribed burning has not been tried at the Pt. Lobos Ranch occurrence, in part due to the risks to surrounding privately owned lands (K. Gray, pers. comm. 1997).

Griffin (pers. comm. 1992) and Ferreira (1995) have noted that establishment of *Pinus radiata* (Monterey pine) seedlings after the 1987 fire has been so vigorous that the pine may be expanding its range at the expense of *Cupressus goveniana* ssp. *goveniana*. Yadon (retired Director, Pacific Grove Museum of Natural History, pers. comm. 1992) believes that the pine's preference for richer soils than those that support *C. goveniana* ssp. *goveniana* would prevent long-term establishment of pines in *C. goveniana* ssp. *goveniana* habitat.

Trifolium trichocalyx exemplifies a taxon that may persist only as a seedbank for years until released by a fire event. Maintaining habitat and certain fire management prescriptions will be required to prevent the extinction of this species in the wild.

Alteration of habitat due to continuing recreational use of portions of Pebble Beach threaten the small populations of *Astragalus tener* var. *titi*, and *Potentilla hickmanii*. Trampling by humans and horses can affect these taxa directly, as well as alter soil compaction and erosion such that alien taxa increase at the expense of native taxa.

At least three of the five plant taxa are threatened with extinction from natural random acts by virtue of the limited number of individuals and range of the existing populations. Inbreeding may affect small or isolated populations if it results in inbreeding depression, typically characterized by lowered seed set, lowered germination rates, and lowered survival and reproduction by offspring. Small populations are also vulnerable to extinction by a single human-caused or natural event. While annual plant taxa, such as *Astragalus tener* var. *titi*, will undergo radical fluctuations in population size as a result of natural environmental conditions, the long-term survival of this taxa depends on maintaining seed production and appropriate habitat for population expansion.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to list these species. Based on this evaluation, the preferred action is to list *Astragalus tener* var. *titi*, *Piperia yadonii*, *Potentilla hickmanii*, and *Trifolium trichocalyx*, as endangered. These taxa are in danger of extinction throughout all or a significant portion of their ranges due to habitat destruction and fragmentation from residential and recreational development; competition from alien plants; alteration of natural fire cycles; and the reduced numbers and size of populations that increase the likelihood of extinction from naturally occurring events and unanticipated human activities.

For the reasons discussed as follows, the Service finds that *Cupressus goveniana* ssp. *goveniana* is likely to become endangered within the foreseeable future throughout all or a significant portion of its range due to habitat alteration and destruction, and/or disruption of natural fire cycles. Competition from alien plants is a potential threat. The Service has determined that threatened rather than endangered status is appropriate for *C. goveniana* ssp. *goveniana* because one of two populations (the Gibson Creek stand managed by the CDPR) has not been significantly affected by human

activities. Also, since it is long-lived, *C. goveniana* ssp. *goveniana* appears to be able to withstand several decades without fire as long as sufficient habitat is maintained. Other alternatives to this action were considered but not preferred because not listing this species would not provide adequate protection and would not be in keeping with the purposes of the Act, and listing it as endangered would not be appropriate, as the populations receive some protection in the Morse Reserve and at Pt. Lobos State Park. Therefore, the preferred action is to list *Cupressus goveniana* ssp. *goveniana* as threatened.

Critical Habitat

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

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the taxa are determined to be endangered or threatened. Critical habitat is not determinable when one or both of the following situations exist—(1) Information sufficient to perform required analyses of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (50 CFR 424.12(a)(2)). Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat designation applies only when the taxa involved occur on Federal lands or on non-Federal lands for which there is some Federal involvement. With the exception of *Piperia yadonii*, none of the plants in this rule occur on Federal lands, nor is there any historical record of them occurring on Federal lands. Federal lands with appropriate habitat are uncommon throughout the historical range of these species, and no potential habitat for *Potentilla hickmanii*, *Astragalus tener* var. *titi*, *Cupressus goveniana* ssp. *goveniana*, or *Trifolium trichocalyx* is known to occur on Federal lands. In addition, Federal involvement is unlikely to occur on non-Federal lands having, or likely to have, populations of these four species because the activities typically conducted in the habitat of these species do not normally require Federal permits or authorization or Federal funding.

Due to this probable lack of Federal involvement, the only potential benefit that would result from critical habitat designation would be notification to the public, private landowners, and local government agencies of the need to protect these species and their habitats. However, during the listing process, and after a species is listed, the Service conducts public outreach in affected local communities. Because this form of public notification is more targeted to specific landowners and local governments, it is more effective than the notification that is provided through the designation of critical habitat. Thus, in the case of these four plant species, there would be little or no additional benefit provided by designation beyond that which results from the listing process itself. Furthermore, designation may lead to adverse reactions by landowners whose property is designated as critical habitat, because such an action is often misconstrued as an attempt by the Federal government to confiscate private property. In fact, section 9 of the Act does not prohibit destruction of plants or their habitat on private land. Moreover, because there is no likely Federal nexus there is no means of protecting critical habitat on these lands, even if critical habitat were to be designated. The widespread misconception that critical habitat designation on private lands necessarily imposes restrictions on private landowners makes designation of critical habitat counterproductive and renders cooperative efforts with private landowners to recover species more difficult. Such cooperative efforts are essential if the Service is to recover species which, like these four taxa, only occur on private lands where there is no known Federal nexus. Designation of critical habitat for *Potentilla hickmanii*, *Astragalus tener* var. *titi*, *Cupressus goveniana* ssp. *goveniana*, or *Trifolium trichocalyx*, therefore, is not prudent because the additional benefit, if any, that might derive from public notification duplicates those that come from the public outreach component of the listing process itself, and would be outweighed by the potential detriment to the recovery of these species due to the misconception that such designation imposes Federal restrictions on private landowners where no Federal nexus exists.

Piperia yadonii also occurs predominantly on private lands where Federal involvement is unlikely. In the case of *P. yadonii*, however, a majority of its individuals are on lands of a single private landowner, who commissioned the studies that documented the species' range and population status. This landowner, therefore, is well aware of the presence and location of the species on its property and there would be no additional benefit to the species from providing to the landowner location information that it already has. Critical habitat designation also would increase the risk of overcollection of *P. yadonii* due to the publication of precise locational maps and detailed habitat descriptions as required under critical habitat regulations (16 U.S.C. 1533(b)(5)(A)(I) and (6)(A); 50 CFR 424.12(c), 424.16(a) and 424.18(a)). The risk of increased threat to *P. yadonii* from overcollection is discussed in more detail.

Piperia yadonii also occurs on State lands. The location of these plants is known to the managing agency, the CDPR, which is committed to protecting these plants. Critical habitat designation for these lands, therefore, would not be of additional benefit to the species.

One population of *Piperia yadonii* was reported from Federal land on Fort Ord in the early 1990s, but this species has not been seen there for several years despite extensive directed surveys (Jones and Stokes Assoc. 1996). The land where it occurred is to be preserved within a development area and will be transferred to a local entity for that purpose in the near future. Should the plant reappear at this site, it is likely that the population will be small and highly vulnerable to collection. Critical habitat designation at this site, therefore, may increase the threat to *P. yadonii* from overcollection in this easily accessible area.

Three small colonies of *Piperia yadonii*, with a total of a few hundred plants, also occur on Federal lands managed by the Naval Postgraduate School and the Presidio of Monterey. The Navy is aware of the location of these plants and is committed to

protecting them. While designation of critical habitat for these populations may provide some small benefit, this benefit must be weighed against the risks associated with such designation. *Piperia yadonii* is an orchid, a plant family highly prized by collectors throughout the world. The threat that collection poses to wild orchids is considered sufficiently serious that the entire orchid family, with the exception of certain species considered at greatest risk, is included on Appendix II of the Convention on the International Trade in Endangered Species (American Orchid Society 1997). Although *P. yadonii* is not currently sought by collectors, other wild California orchids are collected (Coleman 1995). *Piperia yadonii* was previously classified as *Habenaria unalascensis, Habenaria* is a genus that is available commercially and for which instructions for the cultivation of its species are readily available on the Internet (Dragon Agro Products 1997). The listing of *P. yadonii* as endangered publicizes the rarity of the taxa and thus can make them attractive to researchers, curiosity seekers, or collectors of rare plants. Furthermore, if the majority of the plants on the Peninsula are lost to proposed developments, the potential for collection of flowering individuals from protected populations will increase. Several of the small populations at the Presidio of Monterey and the Naval Postgraduate School are located adjacent to roads and easily accessible. Even limited collecting from small populations could have significant negative impacts.

The publication of precise critical habitat descriptions and maps required in a proposal for critical habitat could increase the potential threat to these populations from possible overcollection and, thereby contribute to their decline. The Service believes, therefore, that the designation of critical habitat for the few populations of *Piperia yadonii* on Federal lands is not prudent because any small benefit such designation might confer is significantly outweighed by the potential for increasing the degree of threat to these populations from overcollection. In addition, the Navy is aware of the location of these plants.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the states and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, as follows.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Only one of the taxa, *Piperia yadonii*, occurs on Federal lands. Four small colonies, totaling fewer than 500 plants, have been identified at the Department of the Army's Presidio of Monterey, at the Naval Post-Graduate School in Monterey, and on Fort Ord. The site at Fort Ord was located in the early 1990s, but this species has not been identified there for several years (Jones and Stokes Assoc. 1996). The land where it occurred is to be preserved within a development area and will be transferred to a local entity for that purpose in the near future. Federal agency actions that may require consultation include military training, construction of roads, and other developments that could affect these small colonies.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. With respect to the four plant taxa proposed to be listed as endangered, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale these species in interstate or foreign commerce; remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such endangered plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. *Cupressus goveniana* ssp. *goveniana* (Gowen cypress), proposed to be listed as threatened, would be subject to similar prohibitions (16 U.S.C. 1538(a)(2)(E); 50 CFR 17.61, 17.71). Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions apply to agents of the Service and State conservation agencies.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Colonies of *Piperia yadonii* are known to occur on Federal lands. The Service believes that, based upon the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, pipelines or utility line crossing suitable habitat,) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service according to section 7 of the Act;

(2) Casual, dispersed human activities on foot or horseback (e.g., bird watching, sightseeing, photography, camping, hiking).

(3) Activities on private lands that do not require Federal authorization and do not involve Federal funding, such as grazing management, agricultural conversions, flood and erosion control,

residential development, road construction, pesticide/herbicide application, and pipeline or utility line construction across suitable habitat.

(4) Residential landscape maintenance, including the clearing of vegetation around one's personal residence as a fire break.

The Service believes that the following might potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal lands;

(2) Application of herbicides violating label restrictions;

(3) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Intentional collection, damage, or destruction on non-Federal lands may be a violation of State law or regulations or in violation of State criminal trespass law and therefore a violation of section 9. The Act and 50 CFR 17.62, 17.63, and 17.72 provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits will be sought. Several central coast nurseries have cultivated *Cupressus goveniana* ssp. *goveniana* on occasion, but it apparently is not popular enough to be kept in stock on a regular basis. The Pebble Beach Company is actively cultivating this plant to be used in efforts to restore disturbed habitat (G. Fryberger, *in litt.* 1992).

Requests for copies of the regulations regarding listed plants and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE 11th Avenue, Portland, OR 97232–4181 (telephone 503/231–6241, facsimile 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning permits and associated requirements for endangered and threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Authors. The primary authors of this notice are Diane Steeck and Constance Rutherford, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. Amend § 17.12 (h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Astragalus tener var. *titi.*	Coastal dunes milk-vetch.	U.S.A. (CA)	Fabaceae—Pea	E	640	NA	NA
*	*	*	*	*	*	*	
Cupressus goveniana ssp. *goveniana.*	Gowen cypress	U.S.A. (CA)	Cupressaceae—Cypress.	T	640	NA	NA
*	*	*	*	*	*	*	
Piperia yadonii	Yadon's piperia	U.S.A. (CA)	Orchidaceae—Orchid.	E	640	NA	NA
*	*	*	*	*	*	*	
Potentilla hickmanii ..	Hickman's potentilla	U.S.A. (CA)	Asteraceae—Aster ..	E	640	NA	NA
*	*	*	*	*	*	*	
Trifolium trichocalyx	Monterey clover	U.S.A. (CA)	Fabaceae—Pea	E	640	NA	NA
*	*	*	*	*	*	*	

Dated: July 29, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–21564 Filed 8–11–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 080498B]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna; Closure

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

ACTION: General category closure.

SUMMARY: NMFS has determined that the 1998 Atlantic bluefin tuna (BFT) June-August period General category subquota will be attained by August 8, 1998. Therefore, the General category fishery for June-August will be closed effective at 11:30 p.m. on August 8, 1998. This action is being taken to prevent overharvest of the General category June-August period subquota.

DATES: Effective 11:30 p.m. local time on August 8, 1998, through August 31, 1998.

FOR FURTHER INFORMATION CONTACT: Pat Scida, 978–281–9260, or Sarah McLaughlin, 301–713–2347.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

General Category Closure

NMFS is required, under § 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of BFT will equal the quota and publish a **Federal Register** announcement to close the applicable fishery.

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a subquota of 388 mt of large medium and giant BFT to be harvested from the regulatory area by vessels permitted in the General category during the period beginning June 1 and ending August 31. Based on reported catch and effort, NMFS projects that this subquota will be reached by August 8, 1998. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT by vessels in the General category must cease at 11:30 p.m. local time August 8, 1998. The General category will reopen September 1, 1998, with a quota of 194 mt for the September period. If necessary, the September subquota will be adjusted based on actual landings from the current period. While the General category is open, General category permit holders are restricted from all BFT fishing, including tag-and-release fishing, on restricted-fishing days. However, for the remainder of August, previously designated restricted-fishing days are waived; therefore, General category permit holders may tag and release BFT while the General category is closed, prior to the September 1 opening.

The intent of this closure is to prevent overharvest of the June-August period subquota established for the General category.

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: August 6, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–21576 Filed 8–7–98; 10:38 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 155
Wednesday, August 12, 1998

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 97–110–1]

RIN 0579–AA92

Importation of Grapefruit, Lemons, and Oranges from Argentina

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the citrus fruit regulations by recognizing a citrus-growing area within Argentina as being free from citrus canker. Surveys conducted by Argentine plant health authorities in that area of Argentina since 1992 have shown the area to be free from citrus canker, and Argentine authorities are enforcing restrictions designed to protect the area from the introduction of that disease. We are also proposing to amend the fruits and vegetables regulations to allow the importation of grapefruit, lemons, and oranges from the citrus canker-free area of Argentina under conditions designed to prevent the introduction into the United States of two other diseases of citrus, sweet orange scab and citrus black spot, and other plant pests. These proposed changes would allow grapefruit, lemons, and oranges to be imported into the United States from Argentina subject to certain conditions.

DATES: Consideration will be given only to comments received on or before October 13, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–110–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–110–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Campbell, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799; e-mail: rcampbell@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–8, referred to below as the fruits and vegetables regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

The regulations in "Subpart—Citrus Fruit" (7 CFR 319.28, referred to below as the citrus fruit regulations), restrict the importation of the fruit and peel of all genera, species, and varieties of the subfamilies *Aurantioideae, Rutoideae,* and *Toddalioideae* of the family *Rutaceae* into the United States from specified countries in order to prevent the introduction of citrus canker disease (*Xanthomonas campestris* pv. *citri* (Hasse) Dye).

Argentina is not currently listed in § 319.28(a)(1) of the citrus fruit regulations as a country from which importations are restricted to prevent the introduction of citrus canker, but scientific literature indicates that the A strain of citrus canker—i.e., that which is referred to in § 319.28(a)(1)—occurs in Argentina. Therefore, in this document, we are proposing to amend § 319.28(a)(1) by adding Argentina to the list of countries from which importations are restricted to prevent the introduction of citrus canker. However, as explained below under the heading "Citrus Canker Free Area," the entry for Argentina would contain an exception for the States of Catamarca, Jujuy, Salta, and Tucuman.

The citrus fruit regulations also restrict the importation of the fruit and peel of all species and varieties of the genus *Citrus* into the United States from specified countries, including Argentina, in order to prevent the introduction of the citrus diseases sweet orange scab (*Elsinoe australis* Bitanc. and Jenkins) and the B strain of citrus canker, which is referred to in the citrus fruit regulations as "Cancrosis B."

In this document, the A and B strains of citrus canker are referred to collectively as citrus canker, except in those instances where it is necessary to refer specifically to either of the two strains.

Citrus Canker Free Area

The Government of Argentina has requested that the Animal and Plant Health Inspection Service (APHIS) recognize the citrus production areas in four States in northwestern Argentina—Catamarca, Jujuy, Salta, and Tucuman—as free from citrus canker. In support of its request, the Argentine Government submitted the results of surveys conducted in the citrus-producing areas of those four States since 1992 by Argentina's national plant protection organization, the Servicio Nacional de Sanidad y Calidad Agroalimentaria (SENASA).

APHIS has reviewed the documentation submitted by the Government of Argentina in support of its request and conducted an on-site evaluation in 1994 of Argentina's plant health programs in Catamarca, Jujuy, Salta, and Tucuman with regard to citrus diseases. [1] The evaluation consisted of a review of Argentina's citrus canker survey activities, laboratory and testing procedures for the examination of samples collected during the surveys, and the administration of laws and regulations intended to prevent the introduction of citrus canker into the citrus-growing areas of Catamarca, Jujuy, Salta, and Tucuman from the rest of Argentina and from outside the country. After reviewing the documentation provided by Argentina and the data gathered during the on-site visit, we believe that the Government of Argentina has demonstrated, in accordance with the standards established by the United Nations' Food and Agriculture Organization (FAO) for

[1] Information regarding the documentation submitted by the Government of Argentina and the on-site visit conducted by APHIS may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

pest-free areas, that the citrus-growing areas of Catamarca, Jujuy, Salta, and Tucuman are free from citrus canker.

Based on the information provided by Argentina and the information gathered by APHIS, we are proposing to amend § 319.28(a) to reflect the citrus canker-free status of Catamarca, Jujuy, Salta, and Tucuman. Currently, the regulations in § 319.28(a)(3) list the entire country of Argentina, among other places, as being affected with Cancrosis B. Therefore, we would amend the entry for Argentina in § 319.28(a)(3) to indicate that the States of Catamarca, Jujuy, Salta, and Tucuman are considered to be free from Cancrosis B. Similarly, the proposed new entry for Argentina in § 319.28(a)(1), as discussed above, would also indicate that those four States are considered to be free from citrus canker (i.e., the A strain).

We are also proposing to amend § 319.28(a)(2) of the citrus fruit regulations, which prohibits the importation of citrus fruit and peel from certain countries, including Argentina, based on the presence of sweet orange scab in those countries. As discussed in the next paragraph, we are proposing to amend the fruits and vegetables regulations to allow the importation of grapefruit, lemons, and oranges from Argentina under conditions designed to prevent the introduction of sweet orange scab. Therefore, in order to prevent a conflict between the citrus fruit regulations and the fruits and vegetables regulations, we are proposing to add an exception to the prohibition on citrus fruit and peel from Argentina in § 319.28(a)(2). Specifically, we would add the words "except as provided by § 319.56–2f of this part" after the entry for Argentina in the list of countries considered to be affected with sweet orange scab. That proposed exception would refer the reader to § 319.56–2f of the fruits and vegetables regulations, which is the section we are proposing to add that would contain the conditions under which grapefruit, lemons, and oranges could be imported into the United States from Argentina.

Importation of Grapefruit, Lemons, and Oranges

The Government of Argentina has requested that APHIS allow the importation of grapefruit, lemons, and oranges into the United States from the citrus canker-free States of Catamarca, Jujuy, Salta, and Tucuman. Because there are plant pests of concern other than citrus canker known to exist in Argentina, the proposed importation of grapefruit, lemons, and oranges would be subject to certain conditions. As noted above in our discussion of the content of the citrus fruit regulations, the disease sweet orange scab exists in Argentina. In addition to sweet orange scab, Argentina is also affected with a fungal disease known as citrus black spot (*Guignardia citricarpa*), the Mediterranean fruit fly (Medfly) (*Ceratitis capitata*), and certain fruit flies of the genus *Anastrepha*. To prevent the introduction into the United States of those diseases and fruit flies, the Government of Argentina, with the cooperation of APHIS, has formulated a systems approach of tiered and overlapping measures that, when combined with specified cold treatments, would reduce the risks presented by those pests to a negligible level.

Therefore, we are proposing to allow fresh grapefruit, lemons, and oranges to be imported into the United States from Argentina if they are grown, packed, and shipped under specified phytosanitary conditions designed to mitigate the risk of plant pest introduction. The proposed conditions for importation, which would be set out in a new § 319.56–2f in the fruits and vegetables regulations, are explained below.

Permit Requirement

The fruits and vegetables regulations require persons contemplating the importation of fruits or vegetables that are authorized entry under the regulations to first apply for a permit from APHIS. That permit requirement, which is found in § 319.56–3 of the fruits and vegetables regulations, would be applicable to the importation of grapefruit, lemons, and oranges under the provisions of this proposed rule.

Origin Requirement.

The grapefruit, lemons, or oranges would have to have been grown in a grove located in a region of Argentina that has been determined to be free from citrus canker. As discussed above, we believe that the Government of Argentina has demonstrated, in accordance with FAO standards, that the citrus-growing areas of Catamarca, Jujuy, Salta, and Tucuman are free from citrus canker. This proposed requirement would ensure that the grapefruit, lemons, or oranges would not present a risk of introducing citrus canker into the United States.

Grove requirements

The grapefruit, lemons, or oranges would have to have been grown in a grove that meets several specified conditions intended to prevent the introduction of sweet orange scab and citrus black spot into the United States.

We would require that the grove be registered with the citrus fruit export program of SENASA. Grower registration would, from an administrative standpoint, allow SENASA to identify specific groves and thus track each grove's compliance with the requirements of the export program during the growing season and during the movement of fruit to the packinghouses and subsequent export.

We would also require that the grove be surrounded by a 150-meter-wide buffer area that would be subject to the same treatments as would be applied in the export grove. This buffer area, in which citrus fruit could be grown but from which no citrus fruit could be offered for importation into the United States, would separate the export grove from surrounding agricultural or nonagricultural areas. Because those areas lying outside the buffer area would not be subject to the same measures as would be applied in the export grove and buffer area, there is the possibility that sweet orange scab or citrus black spot may be present in those areas. Thus, by providing for the suppression of disease inoculum over a wide area, the buffer area would offer the export grove an additional measure of protection from those diseases.

In order to prevent the introduction of diseased trees into an export grove, we would require that any new citrus planting stock used in the grove be obtained from a "clean" source. This proposed requirement is already being implemented by SENASA as part of its administration of laws and regulations intended to prevent the introduction of citrus canker into the citrus-growing areas of Catamarca, Jujuy, Salta, and Tucuman from the rest of Argentina and from outside the country.

Under our proposed regulations, planting stock would have to be obtained from a source (e.g., the grove itself, another grove, or a nursery) located within the States of Catamarca, Jujuy, Salta, or Tucuman, or from a SENASA-approved citrus stock propagation center. We would allow the use of planting stock that originated within Catamarca, Jujuy, Salta, or Tucuman because those States have been determined to be free of citrus canker and because Argentine Government regulations restrict the entry of potential citrus canker host material into those States. Similarly, any citrus plants imported into Argentina, and any domestic-origin citrus plants from outside the four citrus canker-free States, must meet strict phytosanitary requirements before they may enter the States of Catamarca, Jujuy, Salta, or Tucuman. Under SENASA supervision,

such citrus plants are officially tested to ensure their freedom from quarantine pests and diseases, and are grown in quarantine before being released for use in the citrus canker-free area of Argentina. We believe that requiring growers to obtain any new grapefruit, lemon, or orange propagative material from one of these sources would help ensure that disease is not introduced into an export grove by new citrus planting stock.

Fallen fruit, leaves, and branches could serve as potential reservoirs of disease inoculum, especially for citrus black spot. Therefore, we would require those materials to be removed from the grove floor and from the ground in the buffer area before the trees in the grove blossom, which is the phase of the growing cycle in which citrus black spot infection primarily occurs. Removing fallen fruit, leaves, and branches before the trees in the grove blossom would help to ensure that the grove is as clean as possible prior to the development of the fruit that would eventually be exported to the United States. We would further require that the grove and buffer area be inspected by SENASA before blossom to verify that the required sanitation measures had been accomplished.

We would further require that the grove and buffer area be treated at least twice with an oil-copper oxychloride spray during the growing season in which fruit was being produced for export to the United States. Treatment with oil-copper oxychloride has been shown to provide control of sweet orange scab and citrus black spot in Argentina. In order to obtain the maximum benefit from each treatment, the timing of the treatments would be determined by SENASA based on its monitoring of climatic data, fruit susceptibility, and the presence of disease inoculum. SENASA personnel would have to monitor the application of the treatments to ensure that the treatments were being applied correctly and at the proper time.

Finally, as an additional means of verifying an export grove's freedom from sweet orange scab and citrus black spot, we would require that each grove and buffer area be surveyed by SENASA 20 days before the harvest of the grove's grapefruit, lemons, or oranges. The required survey would consist of a visual inspection of the grove and the buffer area to check for visible signs of the presence of either disease, followed by the laboratory examination of a sample of fruit. Fruit would be sampled at the rate of 320 fruit from each 200 hectares, and the fruit would be selected according to a randomized sampling protocol determined by SENASA.

Post-harvest Handling of Fruit

After being harvested from an export grove, the grapefruit, oranges, or lemons would have to be handled in accordance with several specific conditions.

We would require that the grapefruit, lemons, or oranges be moved from the export grove to the packinghouse in field boxes or containers of field boxes that are marked to show the SENASA registration number of the grove in which they were grown. The identity of the origin of the fruit would have to be maintained during the time the fruit is being handled and prepared for shipment in the packinghouse. These proposed requirements would ensure that SENASA inspectors would be able to trace the fruit back to its grove of origin in the event that disease was detected on the fruit.

We would prohibit a packinghouse in which grapefruit, lemons, or oranges are processed for export to the United States from accepting any fruit from nonregistered export groves during the time that fruit intended for export to the United States is being handled in the packinghouse. Barring the entry of fruit from nonregistered groves into the packinghouse would ensure that the fruit intended for export is not commingled with or potentially infected by fruit that was grown in a grove that has not been subject to the same sanitation, inspection, and treatment measures that would be required for export groves.

After its arrival at the packinghouse, we would require the fruit to be held in the packinghouse at room temperature for 4 days. This proposed 4-day holding period would allow sufficient time for the symptoms of citrus black spot to become evident in the grapefruit, lemons, or oranges in the event that any latent infection exists in the fruit. At the conclusion of the 4-day holding period, the fruit would have to be examined by SENASA inspectors to verify its freedom from visible signs of disease.

Once the SENASA inspectors have determined that the fruit is free from visible signs of disease, we would require the grapefruit, lemons, or oranges to be chemically treated. Specifically, the fruit would be sequentially treated with: (1) Immersion in sodium hypochlorite (chlorine) at a concentration of 200 parts per million; (2) immersion in orthophenilphenate of sodium; (3) spraying with imidazole; and (4) application of 2–4 thiazalil benzimidazole and wax. These treatments would surface-sterilize the fruit and protect against the development of any spores that may be present. After the fruit has been treated, and before it is packed into clean, new shipping cartons for export, we would require that SENASA inspectors examine the grapefruit, lemons, or oranges a final time for any evidence of disease. The clean, new shipping cartons would have to be marked with the registration number of the grove in which the fruit was grown in order for APHIS or SENASA to trace the fruit back to its origin in the event that pests or diseases are detected in the fruit after it leaves the packinghouse.

Phytosanitary Certificate

We would require grapefruit, lemons, and oranges offered for entry into the United States from Argentina to be accompanied by a phytosanitary certificate issued by SENASA that states the grapefruit, lemons, or oranges were produced and handled in accordance with the origin requirement, grove requirements, and post-harvest handling requirements discussed above. The phytosanitary certificate would also have to state that the grapefruit, lemons, or oranges were examined and found to be free from citrus black spot and sweet orange scab. The phytosanitary certificate would serve as SENASA's official confirmation that the requirements of the regulations in proposed § 319.56–2f(a), (b), and (c) had been met.

Cold Treatment

As noted above, Medfly and fruit flies of the genus Anastrepha are known to exist in Argentina. Therefore, we would require grapefruit, lemons (except smooth-skinned lemons), and oranges offered for entry from Argentina to be treated with an authorized cold treatment listed in the Plant Protection and Quarantine (PPQ) Treatment Manual in order to prevent the introduction of fruit flies into the United States. (Smooth-skinned lemons would be exempted from the proposed cold treatment requirement because they have been shown through Agricultural Research Service studies [2] to not be a host of Medfly, and lemons are not reported to be hosts of *Anastrepha* spp. fruit flies.) The cold treatment that would be required, which is designated as T107(c) in the PPQ Treatment Manual, is approved for use on a variety of fruits—including grapefruit and oranges—to treat for

[2] Information on this research may be obtained from the person listed under FOR FURTHER INFORMATION CONTACT.

Anastrepha spp. fruit flies. The treatment is as follows:

Temperature	Exposure period (days)
32 °F or below	11
33 °F or below	13
34 °F or below	15
35 °F or below	17

Because the exposure times in T107(c) are longer than those in T107(a), the cold treatment for Medfly, the treatment would serve to prevent the introduction of all the fruit flies of concern.

We would have to amend the PPQ Treatment Manual in order to include grapefruit, lemons (except smooth-skinned lemons), and oranges from Argentina in that document's list of countries and fruits for which cold treatment is authorized. Therefore, because the PPQ Treatment Manual is incorporated by reference into the regulations in Title 7, chapter III, we would also have to amend § 300.1, "Materials incorporated by reference; availability," to reflect the date of that amendment to the PPQ Treatment Manual.

The cold treatment would have to be conducted in accordance with the existing requirements of § 319.56–2d of the fruits and vegetables regulations, which applies to the importation of fresh fruits for which cold treatment is a condition of entry. That section sets forth the general requirements concerning the place and manner of cold treatment, safeguarding of untreated fruit, precooling and refrigeration, and special requirements for treatment at certain ports.

Inspection at Port of First Arrival

Grapefruit, lemons, and oranges offered for entry into the United States from Argentina would be subject to § 319.56–6 of the fruits and vegetables regulations, which provides, among other things, that all imported fruits and vegetables, as a condition of entry, shall be inspected and shall be subject to disinfection at the port of first arrival, as may be required by a U.S. Department of Agriculture (USDA) inspector to detect and eliminate plant pests. Section 319.56–6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is so infested with fruit flies or other injurious plant pests that an inspector determines that it cannot be cleaned or treated. The inspector at the port of arrival would also review the documentation, including the phytosanitary certificate, accompanying the fruit to ensure that it was being imported in accordance with the regulations.

Disease detection

If citrus black spot or sweet orange scab is detected on any grapefruit, lemons, or oranges during the course of any of the inspections or tests required by proposed § 319.56–2f, the grove in which the fruit was grown, or was being grown, would have to be removed from the SENASA citrus export program for the duration of that year's growing and harvest season. We would also prohibit, for the remainder of that growing and harvest season, the importation of any fruit harvested from a grove determined to be affected with one of those diseases. These proposed measures would be a necessary step in response to the detection of any of the diseases that the proposed regulations are designed to exclude.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This proposed rule would amend the citrus fruit regulations by recognizing a citrus-growing area within Argentina as being free from citrus canker. This proposed rule would also amend the fruits and vegetables regulations to allow the importation of grapefruit, lemons, and oranges from the citrus canker-free area of Argentina under conditions designed to prevent the introduction into the United States of two other diseases of citrus, sweet orange scab and citrus black spot, and other plant pests. These proposed changes would allow grapefruit, lemons, and oranges to be imported into the United States from Argentina subject to certain conditions.

Analysis

This analysis considers the potential economic impact on domestic producers of citrus of allowing the importation of fresh citrus fruits from Argentina into the United States. It focuses on citrus production, price, and potential consumer and producer impacts of the proposed rule. The possible impacts considered include losses to domestic producers and gains to consumers due to decreased prices. The magnitude of the impact would depend on the size of additional Argentine supply, the U.S. supply and demand for citrus, and price conditions in the rest of the world. The data sources used for the analysis include: USDA, National Agricultural Statistics Service production statistics; USDA, Economic Research Service, "Foreign Agricultural Trade of the United States;" USDA, Agricultural Marketing Service, marketing information; USDA, Foreign Agricultural Service (FAS), "Annual Citrus Report;" and United Nations, Food and Agricultural Organization (FAO), production and trade statistics.

U.S. Citrus Industry

Citrus production

The United States produced an annual average of 31,460 million pounds of citrus between 1992 and 1996, with an average annual total value of $2.5 billion. Four States—Arizona, California, Florida and Texas—accounted for almost all of the commercial citrus fruit production. Of these, California (21 percent) and Florida (76 percent) accounted for approximately 97 percent of the citrus production. A small amount of citrus fruit is produced in Hawaii and Louisiana. The major varieties of citrus fruit include oranges (73 percent), grapefruit (12 percent), lemons (10 percent) tangerines (2.16 percent), tangelos (0.88 percent), temples (0.65 percent), and limes (0.08 percent). The first four—oranges, grapefruit, lemons, and tangerines—account for about 98 percent of the total U.S. citrus production. The 1996 value of U.S.-produced citrus was: Oranges, $1.82 billion; grapefruit, $296 million; lemons, $251 million; limes, $4 million; tangelos, $15 million; tangerines, $111 million; and temples, $14 million. The United States accounted for nearly 24 percent of world citrus production.

In 1992 (the latest census year), citrus fruit was produced on 17,898 farms (528 in Arizona; 8,104 in California; 8,205 in Florida; 509 in Texas; 458 in Hawaii; and 94 in Louisiana). Approximately 96 percent of U.S. citrus fruit farms (Standard Industrial Classification 0272) had gross sales of less than $500,000 and thus are considered to be small entities according to the Small Business Administration size standards (13 CFR 121.601). These small citrus farms accounted for less than 34 percent of the total citrus growing acreage, while the remaining 4 percent of citrus farms (i.e., those with annual gross sales of $500,000 or more) accounted for about 66 percent of the acreage.

Production for the fresh citrus fruit market accounted for about 28 percent of total citrus production or approximately 4.5 million tons. The share of citrus fruits destined for the fresh market (as opposed to the

processing or export markets) varied by State and by fruit. Nearly 69 percent of citrus production in Arizona, 72 percent in California, 14 percent in Florida, and 69 percent in Texas was for the fresh market. Overall, about 20 percent of oranges, 47 percent of grapefruit, 54 percent of lemons, and 70 percent of tangerines was for the fresh market.

U.S. production of citrus fruits showed an annual growth rate of 3.5 percent between 1985 and 1996. Of the major citrus fruits, oranges increased at an average annual rate of 4.5 percent and tangerines at 3.8 percent, while grapefruits and lemons did not show any increase. The annual average consumption of citrus fruits in the United States has stayed at around 25.2 pounds per person over the last 25 years with very little variability (plus or minus 2.6 pounds per person). Specific per capita fresh citrus fruit consumption varies by fruit.

Fresh fruits are marketed throughout the year, most heavily between October and May. Overall, domestic shipments of citrus fruit are at their lowest during the months of July, August, and September, dropping to approximately 3.5 to 5 percent of average annual shipments. U.S. citrus exports are also at their lowest during these months. Citrus imports are also widely distributed throughout the year, but with above-average imports during July, August, and September (about 29 percent). Wholesale prices follow the same seasonal supply patterns, as they are lower during peak production months—October to May—and higher during summer months from June to September. Since the peak production period for citrus in Argentina is from May to October, the entry of Argentine fresh citrus fruits would likely peak during these months, which represent the most likely window of opportunity for Argentine imports to enter the U.S. market. The annual average terminal market wholesale prices in major U.S. cities is approximately 38 cents per pound, while the average from June through September is 43 cents per pound. Importers and brokers would likely benefit from the entry of Argentine citrus fruit into the U.S. market because they would be able to provide quality fruits during the months when domestic production is lowest. Consumers would be able to obtain a wide choice of fresh citrus throughout the year and would not need to wait for the peak domestic production season or switch to non-citrus fruits. Producers would not need to spend additional resources promoting their product as each new harvest season arrives.

Citrus trade

Since consumption of citrus fruits increased by only 1.5 percent between 1985 and 1996 and production increased at 3.5 percent, domestic consumption is not keeping up with the growth rate of production. As a result, foreign markets play an increasingly important role for U.S. producers, accounting for approximately 29 percent of the 1996 annual fresh citrus fruit sales. The total value of the U.S. fresh citrus fruit exports was approximately $704 million in 1996, accounting for approximately 14 percent of world citrus fruit exports in 1996. In terms of value, oranges accounted for 41 percent of citrus exports; grapefruit for 35.6 percent; lemons and limes for 17.5 percent; mandarins and tangerines for 5.2 percent; and other citrus for 0.4 percent. By weight, about 44 percent of 1996 fresh citrus export was oranges, about 41 percent grapefruit, 12 percent lemons and limes and 3 percent tangerines and other fresh citrus fruits. The United States is a net exporter of citrus fruits. The U.S. supply of fresh citrus fruits in 1996 was 6,633 million pounds (= 8,712 + 406—2,485 [production plus imports minus exports]).

A few countries accounted for the bulk of the U.S. fresh citrus export market. In Asia, Japan (44 percent), Hong Kong (10 percent), the Republic of Korea (2.8 percent), Taiwan (2.8 percent), and Singapore (1.5 percent) together accounted for approximately 60 percent of the total U.S. export market. Next, exports to Canada were about 25 percent. In Europe, France (3.14 percent), The Netherlands (2.87 percent), and the United Kingdom (1.13 percent) are the major importers. The small remaining proportion is exported to many other countries. The United States, as noted above, is not a major importer of fresh citrus fruits. Major suppliers are Mexico (42 percent), Spain (29.4 percent), and Australia (20 percent). These countries together supplied about 91 percent of U.S. fresh citrus imports. Imports of fresh citrus fruits were valued at about $92 million.

U.S. fresh citrus fruit exports increased at an average growth rate of 3.1 percent between 1985 and 1996. By fruit, orange exports grew at an average rate of 4.2 percent and grapefruit by 3.7 percent, while lime and tangerine exports did not change. On the other hand, exports of lemons declined by an average rate of 1.1 percent. Since the United States is the second largest producer of oranges and the largest producer of grapefruits in the world, the positive export growth rate in these two commodities is encouraging. Combined with the lower growth rate of domestic consumption, the importance to producers of growth in export markets is clear.

Interestingly, imports to the United States increased at an average annual growth rate of 10 percent during this period. Most of the imports were from countries in the Southern Hemisphere, where growing and harvesting seasons are different. Imports are heaviest during the months when U.S. production and shipments are lowest. There is also a reciprocal window of opportunity for U.S. producers to step in during the months when production is low in these countries. The United States is developing its trade relationship with Argentina, which is one of few countries with which the United States has a favorable balance of trade. The United States exported an average of $4,390 million worth of goods to Argentina while importing goods and services valued at $1,920 million. At present, the United States is exporting approximately $100,000 worth of citrus fruit to Argentina and importing none. Worldwide, the United States exported fresh citrus fruits valued at $704 million in 1996, while it imported only $92 million worth of fresh citrus fruits. Thus, maintaining competitiveness and creating a positive trade environment is very important to U.S. citrus producers.

Argentine Citrus Industry

Production

Argentina produced an annual average of 3,726 million pounds of citrus fruit between 1985 and 1996, with production at about 4,010 million pounds in 1996. Citrus fruit production has increased at an annual growth rate of about 2.3 percent in Argentina, mostly in the States of Entre Rios, Tucuman, Misiones, Salta, Corrientes, Buenos Aires, and Jujuy, which together account for about 93 percent of production. Three of those States—Jujuy, Salta, and Tucuman—would be affected by this proposed rule; those States account for 35 percent of the total Argentine production, or about 1,550 million pounds of citrus fruit. Nearly 51 percent of Argentine citrus fruit production is consumed domestically as fresh fruit, 34 percent is processed, and 15 percent is exported.

The annual rate of increase in Argentine citrus production between 1985 and 1996 is attributable mostly to increased lemon production. For the other citrus varieties, the growth rate was less than 1 percent or there was no change. However, since the current

export growth rates are higher than the production growth rates, large additional export supplies are not expected. Production growth rates (2.3 percent) were outpaced by export growth rates (6.92 percent) in Argentina. The export growth rates varied by fruit and ranged between a 0.7 percent annual increase for grapefruit and a 16.9 percent increase for tangerines.

Citrus Trade

Argentina is one of the major citrus fruit exporters in South America. It exported 718 million pounds in 1996 and an average of 545 million pounds per year between 1992 and 1996. Major destinations included The Netherlands (52 percent), France (14 percent), Spain (8 percent), the United Kingdom (10 percent), and Russia (8 percent). Smaller importers of Argentine citrus include Portugal, Belgium, Germany, Hong Kong and Saudi Arabia. The major destination for Argentine fresh citrus fruit is Europe, accounting for nearly 87 percent of exports. Since the majority of the U.S. fresh citrus exports went to the Far East, the two countries appear to be serving distinct markets. Using the production and export averages, about 15 percent of Argentine citrus production is exported. Imports of fresh citrus accounted for only about 0.06 percent of the utilized total Argentine citrus supply.

Argentina can be expected to maintain its well-established export markets, mainly in Europe. Because there have been substantial investments to cultivate these markets, it is expected that Argentine producers and exporters will continue to value them. Developing heavy dependence on a single market, such as the United States, would make Argentina vulnerable to fluctuations in economic conditions of that market. Nevertheless, a moderate level of exports to the United States would provide another potential outlet for the Argentine citrus industry.

Wholesale Terminal Market Prices

Fresh citrus fruit wholesale prices are lower in Argentina than in the United States. The weighted annual average wholesale price is about 18 cents per pound (where the weights reflect the respective citrus fruit variety production percentages). This does not include the overland transport cost from northwestern Argentina to the south central coast, the sea freight rate, cold treatment while onboard the ship, or the tariff rates, which would add about 15 cents per pound to the average Argentine wholesale price. Wholesale prices in the United States average 38 cents per pound, or about 20 cents per pound more than the average Argentine wholesale price. However, by the time the fresh citrus from Argentina would arrive at U.S. ports, with the additional costs, the gap would narrow. Current wholesale market prices in the Montreal terminal markets indicate that the Argentine fresh citrus fruit sells for about the same price or for slightly more than the California or Florida varieties. The average (from June through September) California lemon price was 46 cents per pound in Montreal, while the average for the Argentine lemons was 50 cents per pound. Similarly, the average price for California oranges was 40 cents while oranges from Argentina sold for 42 cents per pound.

Impact on Producers and Consumers

Allowing the importation into the United States of citrus from Argentina under the conditions described in this proposed rule could potentially result in losses for citrus producers in the United States, approximately 96 percent of whom, as noted above, are considered to be small entities with less than $0.5 million annually in sales. However, Argentina exports most of its fresh citrus fruit during the summer months, so citrus from Argentina would not compete with the late fall, winter, and early spring citrus peak production season in the United States, thus limiting the impact on U.S. producers, exporters, and importers of citrus, and on other small entities that depend on citrus fruit sales. Citrus importers in the United States could be expected to benefit from the increased availability of citrus fruit, especially navel oranges, during the time of year when U.S. production is at its lowest; U.S. consumers of fresh citrus fruits, brokerage houses, packers, and truckers could also be expected to benefit.

The potential economic effects of those imports would depend upon the size of the pre-import U.S. supply, pre-import fresh citrus fruit prices, and the elasticities of demand. Overall, the expected impacts would be a slight loss for producers and a slight gain for consumers, due to increased supply and potentially lower prices. The estimated impacts of introducing imported citrus from Argentina into the U.S. market are as shown in Table 1.

TABLE 1.—IMPORTATION OF CITRUS FROM ARGENTINA: POTENTIAL IMPACT ON U.S. CITRUS MARKET (PRICE ELASTICITY OF DEMAND IS −0.233)

Imports [1] (millions of pounds)	10	20	30	40	50
Percent change in price	(0.29)	(0.58)	(0.87)	(1.17)	(1.46)
Percent change in quantity [2]	(0.08)	(0.17)	(0.25)	(0.33)	(0.41)
Decrease in producer surplus (millions of dollars)	(7.347)	(14.688)	(22.023)	(29.352)	(36.674)
Increase in consumer surplus (millions of dollars)	7.353	14.710	22.073	29.440	36.813
Total surplus (millions of dollars)	0.006	0.022	0.050	0.088	0.139

[1] The projected import totals of 10, 20, 30, 40, and 50 million pounds are based on a 20, 40, 60, 80, and 100 percent diversion, respectively, to the U.S. market of the total expected increase in Argentine citrus exports to all countries. Between 1985 and 1996, Argentine citrus exports increased by an average of 6.92 percent per year. Using the 1996 export of 717.8 million pound as a baseline number, the expected increase in Argentine citrus exports would be 49.67 (=717.8 x 0.0692) million pounds, which we have rounded to 50 million pounds. We assume a certain proportion of this increase would be directed to the newly accessible U.S. market.

[2] Decrease in quantity may be due to diversion of fresh citrus fruit to the processing sector as the price of fresh citrus fruit declines.

Table 1 includes the potential percent change in price, the percent change in quantity, the resultant producer losses, consumer benefits, and net benefits. Price decreases as the volume of imported citrus fruits increases. For example, for a price elasticity of demand −0.233, given an import level of 10 million pounds of Argentine citrus entering the U.S. market, the expected price decrease would be 0.29 percent. (Although there are estimates for oranges and grapefruit, aggregate elasticity estimates for citrus fruit supply and demand were not readily available. The data used for estimating these elasticities and for assessing the impact were obtained from various sources. Citrus production and export data were obtained from various issues of the FAO "Production and Trade

Yearbook," from the FAS "Annual Citrus Report," and from Argentine Embassy sources. U.S. production and trade data were obtained from various issues of "Fruit and Tree Nuts: Situation and Outlook Yearbook." Consumer price index, U.S. gross domestic product, and producer price index data were obtained from the August 1997 issue of "Survey of Current Business." The elasticity of supply and demand are estimated using a simple log-log model and are 0.284 and −0.233, respectively.)

In the scenario in which 10 million pounds of citrus would be exported from Argentina to the United States, U.S. producers would lose about $7.347 million while U.S. consumers would gain about $7.353 million. The net benefit in this scenario would be about $6,000. At the opposite extreme, an export level of 50 million pounds (i.e., all of the anticipated increase in Argentine citrus exports being sent to the U.S. market rather than to other countries) would result in a price decrease of about 1.46 percent. Producers would lose about $36.674 million and consumers would gain about $36.813 million, resulting in net benefit of about $139,000. Additionally, there would be a direct relationship between producer losses and consumer gains on the one hand and the quantity of imports on the other hand. Therefore, the larger the share of imports from Argentina, relative to U.S. domestic supply, the larger the U.S. producer losses and the larger the U.S. consumer gains. In all cases, consumer gains would slightly outweigh grower losses.

The only significant alternative to this proposed rule would be to make no changes in the regulations, i.e., to continue to prohibit the importation of grapefruit, lemons, and oranges from Argentina. We have rejected that alternative because we believe that Argentina has demonstrated that the citrus-growing areas of the States of Catamarca, Jujuy, Salta, and Tucuman are free from citrus canker and because we believe that the systems approach offered by Argentina to prevent the introduction of other plant pests reduces the risks posed by the importation of grapefruit, lemons, and oranges to an negligible level. Maintaining a prohibition on the importation of grapefruit, lemons, and oranges from the Argentine States of Catamarca, Jujuy, Salta, and Tucuman in light of those State's demonstrated freedom from citrus canker would run counter to the United States' obligations under international trade agreements and would likely be challenged through the World Trade Organization. Conversely, our proposal to declare the citrus-growing areas of Catamarca, Jujuy, Salta, and Tucuman free from citrus canker and allowing the importation of grapefruit, lemons, and oranges from those States subject to certain conditions would likely have a beneficial effect on international trade in general, and trade between the United States and Argentina in particular, by reaffirming the United States' continuing commitment to using scientifically valid principles as the basis for regulation.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow the importation of grapefruit, lemons, and oranges from Argentina under certain conditions. If this proposed rule is adopted, State and local laws and regulations regarding grapefruit, lemons, and oranges imported under this rule would be preempted while the fruit is in foreign commerce. Grapefruit, lemons, and oranges are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect would be given to this rule, and this rule would not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 97–110–1. Please send a copy of your comments to: (1) Docket No. 97–110–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404—W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the citrus fruit regulations by recognizing a citrus-growing area within Argentina as being free from citrus canker and would amend the fruits and vegetables regulations to allow the importation of grapefruit, lemons, and oranges from the citrus canker-free area of Argentina under certain conditions. These proposed changes would provide for the importation into the United States of grapefruit, lemons, and oranges from Argentina under conditions designed to prevent the introduction into the United States of two other diseases of citrus, sweet orange scab and citrus black spot, and other plant pests.

The proposed program for the importation of grapefruit, lemons, and oranges from Argentina would require the use of import permits, phytosanitary certificates, and other information-gathering documents to help ensure that the fruit has been grown and handled in accordance with the conditions set forth in the regulations.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .7009 hours per response.

Respondents: Argentine plant health authorities, growers/exporters of citrus in the citrus canker-free area of Argentina.

Estimated annual number of respondents: 470.

Estimated annual number of responses per respondent: 2.1702.

Estimated annual number of responses: 1,020.

Estimated total annual burden on respondents: 715. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

Copies of this information collection can be obtained from Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend title 7, chapter III, of the Code of Federal Regulations as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162 and 167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 300.1, paragraph (a), the introductory text would be revised to read as follows:

§ 300.1 Materials incorporated by reference; availability.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted November 30, 1992, and includes all revisions through [date], has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

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PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

§ 319.28 [Amended]

4. In Subpart—Citrus Fruit, § 319.28 would be amended as follows:

a. In paragraph (a)(1), by adding the words "Argentina (except for the States of Catamarca, Jujuy, Salta, and Tucuman, which are considered free of citrus canker)," immediately after the word "Seychelles,".

b. In paragraph (a)(2), by adding the words "(except as provided by § 319.56–2f)" immediately after the word "Argentina".

c. In paragraph (a)(3), by adding the words "(except for the States of Catamarca, Jujuy, Salta, and Tucuman, which are considered free of Cancrosis B)" immediately after the word "Argentina".

5. In Subpart—Fruits and Vegetables, a new § 319.56–2f would be added to read as follows:

§ 319.56–2f Administrative instructions governing importation of grapefruit, lemons, and oranges from Argentina.

Fresh grapefruit, lemons, and oranges may be imported from Argentina into the United States only under permit and only in accordance with this section and all other applicable requirements of this subpart.

(a) *Origin requirement.* The grapefruit, lemons, or oranges must have been grown in a grove located in a region of Argentina that has been determined to be free from citrus canker. The following regions in Argentina have been determined to be free from citrus canker: The States of Catamarca, Jujuy, Salta, and Tucuman.

(b) *Grove requirements.* The grapefruit, lemons, or oranges must have been grown in a grove that meets the following conditions:

(1) The grove must be registered with the citrus fruit export program of the Servicio Nacional de Sanidad y Calidad Agroalimentaria (SENASA).

(2) The grove must be surrounded by a 150-meter-wide buffer area. No citrus fruit grown in the buffer area may be offered for importation into the United States.

(3) Any new citrus planting stock used in the grove must meet one of the following requirements:

(i) The citrus planting stock originated from within a State listed in paragraph (a) of this section; or

(ii) The citrus planting stock was obtained from a SENASA-approved citrus stock propagation center.

(4) All fallen fruit, leaves, and branches must be removed from the ground in the grove and the buffer area before the trees in the grove blossom. The grove and buffer area must be inspected by SENASA before blossom to verify that these sanitation measures have been accomplished.

(5) The grove and buffer area must be treated at least twice during the growing season with an oil-copper oxychloride spray. The timing of each treatment shall be determined by SENASA based on its monitoring of climatic data, fruit susceptibility, and the presence of disease inoculum. The application of treatments shall be monitored by SENASA to verify proper application.

(6) The grove and buffer area must be surveyed by SENASA 20 days before the grapefruit, lemons, or oranges are harvested to verify the grove's freedom from citrus black spot (*Guignardia citricarpa*) and sweet orange scab (*Elsinoe australis*). The grove's freedom from citrus black spot and sweet orange scab shall be verified through:

(i) Visual inspection of the grove and buffer area; and

(ii) Laboratory examination of 320 fruits taken from each 200 hectares according to SENASA's randomized sampling protocol.

(c) *After harvest.* After harvest, the grapefruit, oranges, or lemons must be handled in accordance with the following conditions:

(1) The fruit must be moved from the grove to the packinghouse in field boxes or containers of field boxes that are marked to show the SENASA registration number of the grove in which they were grown. The identity of the origin of the fruit must be maintained.

(2) During the time that a packinghouse is used to prepare grapefruit, lemons, or oranges for export to the United States, the packinghouse may accept fruit only from groves that meet the requirements of paragraph (b) of this section.

(3) After arriving at the packinghouse, the fruit must be held at room temperature for 4 days to allow for symptom expression of citrus black spot in the event that latent infection exists in the fruit.

(4) After the 4-day holding period, the fruit must be inspected by SENASA to verify its freedom from citrus black spot and sweet orange scab. The fruit must then be chemically treated as follows:

(i) Immersion in sodium hypochlorite (chlorine) at a concentration of 200 parts per million;

(ii) Immersion in orthophenilphenate of sodium;

(iii) Spraying with imidazole; and

(iv) Application of 2–4 thiazalil benzimidazole and wax.

(5) Before packing, the treated fruit must again be inspected by SENASA to verify its freedom from citrus black spot and sweet orange scab.

(6) The fruit must be packed in clean, new boxes that are marked with the SENASA registration number of the grove in which the fruit was grown.

(d) *Phytosanitary certificate.* Grapefruit, lemons, and oranges offered for entry into the United States from

Argentina must be accompanied by a phytosanitary certificate issued by SENASA that states the grapefruit, lemons, or oranges were produced and handled in accordance with the requirements of paragraphs (a), (b), and (c) of this section, and that the grapefruit, lemons, or oranges are apparently free from citrus black spot and sweet orange scab.

(e) *Cold treatment.* Due to the presence in Argentina of Mediterranean fruit fly (Medfly)(*Ceratitis capitata*) and fruit flies of the genus *Anastrepha*, grapefruit, lemons (except smooth-skinned lemons), and oranges offered for entry from Argentina must be treated with an authorized cold treatment listed in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter. The cold treatment must be conducted in accordance with the requirements of § 319.56–2d of this subpart.

(f) *Disease detection.* If, during the course of any inspection or testing required by this section or § 319.56–6 of this subpart, citrus black spot or sweet orange scab is detected on any grapefruit, lemons, or oranges, the grove in which the fruit was grown or is being grown shall be removed from the SENASA citrus export program for the remainder of that year's growing and harvest season, and the fruit harvested from that grove may not be imported into the United States from the time of detection through the remainder of that shipping season.

Done in Washington, DC, this 6th day of August 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–21595 Filed 8–11–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1106

[DA–98–08]

Milk in the Southwest Plains Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal to suspend a portion of the supply plant shipping standard and the touch-base requirement of the Southwest Plains Federal milk marketing order (Order 106) for the period of September 1998 through August 1999. The action was requested by Kraft Foods, Inc. (Kraft), which contends the suspension is necessary to prevent the uneconomical and inefficient movement of milk and to ensure that producers historically associated with the market will continue to have their milk pooled under Order 106.

DATES: Comments must be submitted on or before August 19, 1998.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456. Comments may be faxed to (202) 690–0552 or e-mailed to OFB__FMMO__Comments@usda.gov. Reference should be given to the title of action and docket number.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932, e-mail address Nicholas__Memoli@usda.gov.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed rule in conformance with Executive Order 12866.

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 request modification or exemption from such order by filing 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. A handler is afforded the opportunity for a hearing on the petition. After a 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 its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of June 1998, 2,187 dairy farmers were producers under Order 106. Of these producers, 2,138 producers (*i.e.*, 98%) were considered small businesses. For the same month, 16 handlers were pooled under Order 106, of which, two were considered small businesses.

The supply plant shipping standard and the touch-base requirement are designed to attract an adequate supply of milk to the market to meet fluid needs. Kraft, the proponent of this proposal, anticipates that there will be an adequate supply of milk available within the general area to meet the needs to the Order 106 market and states supplemental milk supplies will not be needed.

The proposal would allow a supply plant that has been associated with the Southwest Plains market during the months of September 1997 through January 1998 to qualify as a pool plant without shipping any milk to a pool distributing plant during the following months of September 1998 through August 1999. The proposed action would also suspend the requirement that producers touch-base at a pool distributing plant with at least one day of production during the month before their milk is eligible to be diverted to nonpool plants. Thus, this rule would lessen the regulatory impact of the order on certain milk handlers and would

tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the suspension of the following provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for the months of September 1, 1998, through August 31, 1999:

In § 1106.6, the words "during the month".

In § 1106.7(b)(1), beginning with the words "of February through August" and continuing to the end of the paragraph.

In § 1106.13, paragraph (d)(1) in its entirety.

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to the USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Programs during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed rule would suspend a portion of the supply plant shipping standard and the touch-base requirement of the Southwest Plains order for the period of September 1998 through August 1999. The proposed suspension would allow a supply plant that has been associated with the Southwest Plains order during the months of September 1997 through January 1998 to qualify as a pool plant without shipping any milk to a pool distributing plant during the months of September 1998 through August 1999. Without the suspension, a supply plant would be required to ship 50 percent of its producer receipts to pool distributing plants during the months of September through January and 20 percent of its producer receipts to pool distributing plants during the months of February through August to qualify as a pool plant under the order.

The proposed rule would also suspend the requirement that producers "touch-base" at a pool plant with at least one day's production during the month before their milk is eligible for diversion to a nonpool plant. By suspending the touch-base provision, producer milk would not be required to be delivered to pool plants before going to unregulated manufacturing plants.

According to Kraft's letter requesting the suspension, supplemental milk supplies will not be needed to meet the fluid needs of distributing plants. Kraft anticipates that there will be an adequate supply of direct-ship producer milk located in the general area of distributing plants available to meet the Class I needs of the market. The handler notes that the supply plant shipping provision and the touch-base requirement have been suspended since 1993 and 1992, respectively.

Kraft states there is no need to require producers located some distance from pool distributing plants to touch-base when their milk can more economically be diverted directly to manufacturing plants in the production area. Thus, the handler contends the proposed suspension is necessary to prevent the uneconomical and inefficient movement of milk and to ensure producers historically associated with the Order 106 will continue to have their milk pooled under the order.

Accordingly, it may be appropriate to suspend the aforesaid provisions from September 1, 1998 through August 31, 1999.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Dated: August 6, 1998.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 98–21579 Filed 8–11–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–97–131]

RIN 2115–AE47

Drawbridge Operation Regulations; Acushnet River, MA.

AGENCY: Coast Guard, DOT.

ACTION: Notice of withdrawal of proposed rule.

SUMMARY: The Coast Guard has withdrawn the notice of proposed rulemaking governing the New Bedford Fairhaven (Rt–6) Bridge, mile 0.0, over the Acushnet River between New Bedford and Fairhaven, Massachusetts. In light of comments received, the Coast Guard reconsidered the proposed changes to the operating regulations and determined that the changes were too restrictive for the waterway users. It is expected that this action will better meet the present needs of navigation.

DATES: The NPRM is withdrawn effective August 12, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at 408 Atlantic Avenue, Boston, MA. between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

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

SUPPLEMENTARY INFORMATION: The Route 6 Bridge presently opens on the hour from 6 a.m. to 10 a.m., a quarter past the hour from 11:15 a.m. to 6:15 p.m., and at all other times on call. The draw also opens at any time for vessels with a draft exceeding 15 feet and for vessels owned or operated by the U.S. Government, state or local authorities. Each opening of the draw should not exceed 15 minutes except for vessels with drafts exceeding 15 feet or in extraordinary circumstances.

On April 20, 1998, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations: Acushnet River, Massachusetts, in the **Federal Register** 63 FR 19435. Interested persons were invited to comment on the notice of proposed rulemaking on or before June 19, 1998. The proposed changes to the operating rules published in the notice of proposed rulemaking would have required the bridge to open on signal on the hour from 6 a.m. to 7 p.m., except that from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday, the

bridge need not open, except for inbound commercial fishing vessels on the hour. The bridge would be required to open on signal at any time for vessels with a draft of 15 feet or greater.

The Coast Guard received twenty (23) comment letters in response to the notice of proposed rulemaking and a petition signed by 76 recreational boaters. All the comment letters and the petition opposed the proposed changes to the operating rules for the bridge. Comment letters were received from commercial operators, public officials, commercial facilities, recreational vessel owners, and marinas located upstream of the bridge. The petition was from recreational boaters located at several marinas upstream of the bridge. The comment letters and the petition objected to any limitation of the operating hours for both commercial and recreational vessels at any time. They indicated that the marine operators have enough restrictions with the existing hourly openings and further limitations on their ability to transit to their facilities would cause an undue economic hardship on their operations.

The marinas located upstream of the bridge indicated a potential loss of business could result since many of their customers likely would seek other locations rather than deal with the hourly openings and the proposed two additional closed periods Monday through Friday. The commercial operators indicated that any restrictions to commercial vessels would be totally unacceptable and would place a hardship on the main economic interests of the New Bedford area.

In light of the strong opposition to the notice of proposed rulemaking, the Coast Guard reconsidered changing the operating regulations for the bridge and determined that the proposed rule is too restrictive for the waterway users.

The Coast Guard no longer believes that this proposed rule achieves the requirement of balancing the navigational rights of waterway users and the needs of land based transportation.

The notice of proposed rulemaking is withdrawn and the docket is closed.

Dated: July 10, 1998.

James D. Garrison,

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

[FR Doc. 98–21596 Filed 8–11–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MN59–01–7284b; FRL–6139–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Minnesota; Municipal Waste Combustor State Plan Submittal

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the Minnesota State Plan submittal for implementing the Emission Guidelines for Large Municipal Waste Combustors (MWCs). The State's plan submittal was made pursuant to requirements found in the Clean Air Act (CAA). The State's plan was submitted to EPA on April 28, 1998 in accordance with the requirements for adoption and submittal of State plans for designated facilities in 40 CFR part 60, subpart B. It establishes performance standards for existing large MWCs and provides for the implementation and enforcement of those standards. The EPA finds that Minnesota's Plan for existing large MWCs adequately addresses all of the Federal requirements applicable to such plans. In the final rules of this **Federal Register**, the EPA is approving this action as a direct final without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received by September 11, 1998.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the following address: (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 office.) EPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Dated: July 23, 1998.

Robert Springer,

Acting Regional Administrator, Region V.

[FR Doc. 98–21676 Filed 8–11–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 31

[FAR Case 97–010]

RIN 9000–AH71

Federal Acquisition Regulation; Taxes Associated With Divested Segments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have decided to withdraw the proposed rule published in the **Federal Register** at 62 FR 49903, September 23, 1997 (FAR Case 97–010, Taxes Associated with Divested Segments).

When a contractor discontinues operations through the sale or other transfer of ownership of a segment, the contractor may be assessed state and local taxes on the gain resulting from that sale or transfer. Since the Government does not share in the gain resulting from the segment sale or transfer, the Government should not share in any tax increases resulting from the segment sale or transfer. The rule proposed revisions to Federal Acquisition Regulation 31.205–41, Taxes, to add increased taxes resulting from a contractor's sale or other transfer of ownership of a segment to the list of unallowable costs.

The respondents expressed concern that the rule would place a significant administrative burden on contractors by requiring them to compute state and local taxes twice: once to determine the actual taxes and again to assess the taxes that would have been paid had the segment not been sold. The DoD, GSA, and NASA have decided to withdraw

the proposed rule, pending further study of how best to implement this policy without creating an undue administrative burden for both the contractor and the Government.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson at (202) 501–1900. Please cite FAR case 97–010, withdrawal.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: August 7, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–21631 Filed 8–11–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 375 and 377

[Docket No. FHWA–97–2979]

RIN 2125–AE30

Transportation of Household Goods; Consumer Protection Regulations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension and reopening of comment period.

SUMMARY: The FHWA is extending and reopening this rulemaking's comment period for an additional 60 day period of time. This is in response to one petition received by the FHWA requesting an extension of the comment period closing date. The petitioner based her request upon her belief that the FHWA provided too brief an opportunity to enable individual consumers, as opposed to industry lobbyists, to become aware of the rulemaking, to digest the NPRM's contents and to respond to the opportunity with comments. This NPRM is required, in part, by the Paperwork Reduction Act of 1995, because most of the information collection burdens formerly imposed by the Interstate Commerce Commission have never received Office of Management and Budget (OMB) approval.

DATES: Comments to the NPRM should be received no later than October 13, 1998. The FHWA will consider late comments to the extent practicable.

ADDRESSES: Signed, written comments should refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Vining, Chief, Licensing and Insurance Division (HIA–30), Office of Motor Carrier Information Analysis, (202) 358–7055, Mr. Michael Falk, Motor Carrier Law Division, Office of the Chief Counsel (HCC–20), (202) 366–1384, or Mr. David Miller, Office of Motor Carrier Research and Standards (HCS–10), (202) 366–1790, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help.

You may download an electronic copy of this document using a personal computer, modem, and suitable communications software from the Federal Register Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at URL: http://www.nara.gov/fedreg and at the Government Printing Office's databases at URL:http://www.access.gpo.gov/su_docs.

Background

On May 15, 1998, (63 FR 27126), the FHWA published an NPRM requesting comments to a proposed rule. The proposed rule would regulate motor carriers transporting household goods by requiring these motor carriers to provide certain services to protect consumers.

Many customers of household goods carriers, particularly those customers who move at their own expense and are infrequent users of transportation services, are unsophisticated and less able to protect themselves than commercial shippers. In order to ensure these consumers are protected, the Interstate Commerce Commission (ICC) had prescribed regulations governing the transportation of household goods. These regulations were codified at 49 CFR part 1056.

Following the termination of the ICC, the responsibility for the household goods regulations was delegated to the Secretary of Transportation pursuant to the ICCTA, Pub. L. 104–88, 109 Stat. 803, effective January 1, 1996. The Surface Transportation Board (STB) and the FHWA transferred these regulations from 49 CFR chapter X, Part 1056 to 49 CFR chapter III, Part 375 on October 21, 1996. See 61 FR 54706. On December 27, 1996 (61 FR 68162), the Secretary of Transportation delegated to the Federal Highway Administrator the responsibilities to carry out certain functions and exercise the authority vested in the Secretary under the ICCTA, including 49 U.S.C. 14104, Household goods carrier operations.

Enactment of the ICCTA requires deletion from the regulations of all references to the former ICC and repealed sections of the Interstate Commerce Act, revision of the regulations to codify the transfer to the FHWA of oversight responsibilities for the household goods moving industry, and other editorial corrections.

The FHWA also must seek and obtain OMB approval for the information the FHWA proposes motor carriers and individual shippers must collect, disseminate, and disclose in 49 CFR part 375. "Controlling Paperwork Burdens on the Public," 5 CFR part 1320, implements the Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 22, 1995). Part 1320 requires the FHWA to obtain OMB approval before the FHWA requires the public to collect, disseminate, and disclose the information proposed in 49 CFR part 375. The NPRM's 60-day comment period is serving as the 60-day period required under 5 CFR 1320.8(d), 1320.11, and 1320.12.

On July 3, 1998, the FHWA received a petition from Barbara R. Kueppers, Esquire, to extend the comment period for an additional 60-day period. She stated the original 60-day period allotted too brief an opportunity "to enable individual consumers, as opposed to industry lobbyists, to be aware of the rulemaking, to digest the contents of the proposed rules and to respond with meaningful comments."

For the reason in the above paragraph, the FHWA finds good cause to extend this NPRM comment period closing date until October 13, 1998, to provide individual consumers and others additional time to digest the NPRM's contents and to respond with salient comments.

List of Subjects in 49 CFR Part 375

Advertising, Arbitration, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

List of Subjects in 49 CFR Part 377

Credit, Freight forwarders, Highways and roads, Motor carriers.

Authority: 23 U.S.C. 315 and 49 CFR 1.48.

Issued on: August 5, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 98–21610 Filed 8–11–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD09

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule to List the Black Legless Lizard as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposed rule, published in the **Federal Register** on August 2, 1995 (60 FR 39326), to list the black legless lizard (*Anniella pulchra nigra*) as an endangered species under the Endangered Species Act of 1973, as amended (Act). The black legless lizard is now known to occur in a much wider variety of habitat than previously thought, and the threats to its survival have decreased since the proposed rule was published. The Installation-Wide Multispecies Habitat Management Plan (HMP) for Former Fort Ord, now provides preservation and habitat management on 546 hectares (ha) (1,366 acres (ac)) of coastal and interior dune sheets occupied by the black legless lizard. Elsewhere, a large proportion of the remaining habitat of the black legless lizard is already protected from urbanization and commercial development on public lands, and widespread losses of habitat are unlikely to continue in the foreseeable future. Recent and ongoing restoration efforts on dunes colonized by alien vegetation are likely to benefit the black legless lizard. Furthermore, extensive new invasion of existing black legless lizard habitat by alien plants is unlikely to occur. Based on this information the Service concludes that listing of the black legless lizard is not warranted.

ADDRESSES: The complete file for this action is available for inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura California 93003.

FOR FURTHER INFORMATION CONTACT: Mr. Carl T. Benz, Assistant Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, at the above address (805/644–1766).

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1995, the Service published a proposal to list five plant species and the black legless lizard from Monterey County, California as endangered or threatened in the **Federal Register** (60 FR 39326) . The subject of this withdrawal, the black legless lizard, was originally described by Fischer in 1885 as *Anniella nigra* (in Hunt 1983). The description of *A. nigra* as distinct from *A. pulchra,* which had been previously described by Gray in 1852 and Richardson in 1854 (in Hunt 1983), was based on unique scalation, body proportions, and coloration observed in a single specimen. Since the original description, the taxonomic status of the black legless lizard has been open to interpretation (Hunt 1983 and references therein; Murphy and Smith 1985, 1991; Jennings and Hayes 1994). However, since at least the 1940s, most authors have concluded that the black legless lizard is a subspecies of *A. pulchra.* As currently recognized, the California legless lizard, *A. pulchra,* consists of two subspecies; a wide-ranging form, *A. p. pulchra,* the silvery legless lizard, and a more narrowly ranging form, *A. p. nigra,* the black legless lizard.

The black legless lizard has been collected primarily from coastal dunes of the Monterey Peninsula and Monterey Bay between the Salinas and Carmel rivers (Miller 1943, Bury 1985). However, *Anniella* with dark backs and other morphological traits resembling the black legless lizard have been collected north of the Salinas River as far as the San Francisco Bay area and south of the Carmel River in the Morro Bay and Pismo Beach areas, and on the Santa Maria dune sheet at the Guadalupe (San Luis Obispo County) and Mussel Rock (Santa Barbara County) dunes. The relationship of these lizards to *A. p. nigra* remains unresolved (Miller 1943, Bezy *et al.* 1977, Hunt 1983, Bury 1985, Jennings and Hayes 1994). Miller (1943) and Bury (1985) believed unambiguous black legless lizard populations to be restricted to the coastal area between the Salinas and Carmel rivers. Stebbins (1985) considered the distribution of this taxon to be the Monterey Peninsula, Monterey Bay, and Morro Bay. Hunt (1983) showed an even more extensive distribution. All of these authors agree that coastal specimens of *Anniella* from between the Salinas and Carmel rivers are black legless lizards. As a result, the August 2, 1995, proposal of *A. p. nigra* as endangered was applied only to the range of this taxon as described by Miller (1943) and Bury (1985).

Based on electrophoretic analyses of *Anniella* from a small number of localities in California and Baja California, Mexico, Bezy *et al.* (1977) concluded that the genetic distance between *Anniela. p. nigra* and *A. p. pulchra* was consistent with subspecific classification. Rainey (1984) conducted biochemical analyses of *Anniella* from several coastal central California localities with the goal of resolving the distinctness of the black legless lizard. The results suggested genetic differences between dark forms of *A. p. pulchra* from Morro Bay and *A. p. nigra* from the Monterey Peninsula. The results of more fine-scaled sampling in the vicinity of Monterey Bay revealed differences in allele frequencies even among adjacent sites, suggesting genetic subdivisions even within a limited area, but too few samples were analyzed to draw any reliable conclusions.

The black legless lizard is a burrowing, limbless lizard about the diameter of a pencil and reaches a maximum length of about 23 centimeters (cm) (9 inches (in)). It has a black or dark brown back (hatchlings are light colored) and a yellow underside (Fisher 1934, Miller 1943, Hunt 1983, Stebbins 1985). The black legless lizard is distinguished from the silvery legless lizard by dark back coloration, fewer back scales count, and a relatively short tail (Miller 1943, Hunt 1983, Bury and Corn 1984).

Although the historical distribution of the black legless lizard is somewhat uncertain, museum specimens collected since the late 1800s suggest a distribution restricted to coastal and interior dunes and other areas of sandy soils in the vicinity of Monterey Bay and the Monterey Peninsula. Over the last 20 years, biological surveys and anecdotal accounts of naturalists and area residents confirm that the black legless lizard is still extant within this range; however, much of the coastal sandy plains and dunes that were habitat for this lizard, particularly on

the Monterey Peninsula, have been converted to urban or other uses.

Bury (1985) surveyed most potential habitat for the black legless lizard, as well as sites as far south as Morro Bay and north to Año Nuevo State Reserve in San Mateo County where intergrades might occur. Black legless lizards were found at 17 sites, all of which lie on or near approximately 45 kilometers (km) (28 miles (mi)) of coastline between the Salinas and Carmel rivers. Within the range of the black legless lizard, habitat destruction due to urbanization, particularly on the Monterey Peninsula, has reduced and fragmented the habitat available to this lizard. The remaining coastal habitat is degraded to varying degrees by current or previous human effects such as trampling, sand mining, vehicular use, and introduction of exotic plants, particularly *Carpobrotus edulis* and *Ammophila arenaria*.

Summary of Comments on the Proposed Rule

In the August 2, 1995, proposed rule (60 FR 39326) and associated notifications, all interested parties were requested to submit factual reports or information to be considered in making a final listing determination. The proposed rule opened a public comment period through October 9, 1995. A public hearing was requested by one commenter. Due to the Federal moratorium on final listing actions, imposed on April 10, 1995, the public hearing and processing of the final rule could not be scheduled immediately. Once the moratorium was lifted, on April 26, 1996, the Service established its priority for listing actions and the public hearing was scheduled. The public hearing was held on August 20, 1996, in Monterey, California, and allowed presentation of both oral and written comments. An associated 60-day public comment period closed August 30, 1996. During the hearing and public comment period substantial new information was submitted concerning the range, habitats, and taxonomic status of the legless lizards. To allow the public to comment on this new information and to permit submission of any new information that had become available on the other taxa in the package, the comment period was reopened. The second 30-day public comment period closed on May 2, 1997. Appropriate Federal and State agencies, local governments, scientific organizations, and other interested parties were contacted and asked to comment. Legal notices of the availability of the proposed rule were published in the *Monterey Herald* and the *Santa Cruz Sentinel* during the initial comment period, and in the *Monterey Herald, Half Moon Bay Review*, and *Pacifica Tribune* for the 1997 comment period.

During the public comment periods and public hearing, 20 agencies, groups, and individuals commented on the plant taxa included in the proposed rule, some of them multiple times. The majority of comments received concerned the proposal to list the black legless lizard. Written comments and oral statements presented at the public hearing and received during the comment periods were given equal consideration and are addressed in the following summary. Because the proposed rule included five plant taxa in addition to the black legless lizard, only those comments specific to the black legless lizard are addressed in this notice. Comments specific to the five plant taxa and general comments on the proposed rule are discussed in a separate **Federal Register** notice being published concurrently with this withdrawal. Comments of a similar nature are grouped into a single issue. These issues and the Service's responses are discussed below.

Issue 1: Several commenters warned that the economic development or revitalization of the jurisdictions within the range of the black legless lizard could be threatened by the listing. Additionally, noting that the black legless lizard is regularly encountered on agricultural, commercial and residential properties, several commenters were concerned that the listing could curtail, or make illegal, the everyday activities of property owners, such as tilling soil for farming, yard work, and landscaping.

Service Response: Section 4(b)(1)(A) of the Act requires that a listing determination be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to "ensure" that listing decisions are "based solely on biological criteria and to prevent non-biological criteria from affecting such decisions' (H.R. Rep. No. 97–835, 97th Cong. 2nd Sess. 19 (1982)). As further stated in the legislative history, "economic considerations have no relevance to determinations regarding the status of species." Because the Service is specifically precluded from considering economic impacts in a final determination on a proposed listing, possible economic consequences of listing the black legless lizard were not considered.

Issue 2: Several commenters argued that there is insufficient basis for a listing at this time because experts disagree on the distinctness of the black legless lizard as well as the basis for distinguishing between the black legless lizard and the more common silvery form. On the other hand, one commenter submitted an unpublished manuscript which included a phylogeny of legless lizards based on mitochondrial DNA sequencing.

Service Response: A brief review of the taxonomic history of the black legless lizard is provided in the background section of this notice. All available evidence indicates that the California legless lizard, *Anniela pulchra*, is subdivided into a number of more or less genetically distinct groups. Unresolved evolutionary relationships continue to interest workers in the fields of evolutionary biology, systematics, and natural history, and it is recognized that taxonomic studies that may result in the revision of *A. pulchra* are likely. Nevertheless, the black legless lizard has been regarded as taxonomically distinct for over 100 years. Despite ambiguities that exist regarding the distinctness and relationships of legless lizards north of the Salinas River and south of the Carmel River, the presence of a distinct, more or less isolated, legless lizard in the vicinity of Monterey Bay has not been seriously debated for several decades.

Issue 3: Citing new information relating to the closure of the former Fort Ord, several commenters pointed out that legless lizards have now been found to occur over a much wider range and in a more complex array of habitats than was described in the proposed rule. These commenters encouraged the Service to delay the listing decision until the taxonomic identity of these lizards and their distribution and abundance on the former Fort Ord lands are established.

Service Response: The Service acknowledges that new information on distribution and habitat use has been made available since the proposal to list the black legless lizard as endangered (60 FR 39326). In 1995 and 1996, legless lizards were encountered by U.S. Army personnel during unexploded ordnance cleanup operations at the former Fort Ord (James W. Willison, Director of Environmental and Natural Resources Management, Presidio of Monterey, *in litt.* 1997). Late in 1996, the Fort Ord Coordinated Resource Management and Planning (CRMP) team formed a special subcommittee to coordinate surveys for legless lizards on the former base and nearby areas. Field surveys have been conducted in the interior of the former base on lands managed by the City of Marina, the University of California, and the Bureau of Land Management (BLM)

(Robert E. Beehler, Area Manager, Hollister Resource Area, BLM, *in litt.* 1997). During these surveys, legless lizards have been encountered in many new localities and in a variety of habitats including live oak woodland, non-native grassland/oak woodland ecotone, grassland/shrub, dune scrub, and maritime chaparral. The implications of these survey results with respect to the status of the black legless lizard are discussed under Factor A in the "Summary of Factors Affecting the Species" section.

Issue 4: Several commenters argued that the habitat of the black legless lizard is much more secure than indicated in the proposed rule because the lizard will now be protected on 6,800 ha (17,000 ac) as part of the HMP for former Fort Ord, and because parts of its range overlap with the range of the federally listed Smith's blue butterfly (*Euphilotes enoptes smithi*).

Service Response: The Service agrees. Roughly 6,800 ha (17,000 ac) on the former Fort Ord is permanently protected under the provisions of the HMP (U.S. Army Corps of Engineers 1997). The HMP was established in April, 1994, and subsequently revised in November, 1996, and again in April, 1997. Since 1995, surveys conducted under the auspices of the CRMP team have demonstrated a wide, but apparently patchy, distribution of dark-colored legless lizards on former Fort Ord lands. Within the HMP boundaries, legless lizards have been encountered on lands that have already been developed, on lands that are proposed for development, and on lands that are permanently protected and will be managed for sensitive plants and animals.

Over much of its range, the black legless lizard is found in habitats occupied by the Smith's blue butterfly. On public lands, where the habitat of the Smith's blue butterfly is largely protected, management actions such as removing exotic vegetation and restoring native plant communities may benefit the black legless lizard when it is present. On private lands occupied by the Smith's blue butterfly, proposed developments may be permitted via the habitat conservation plan (HCP) process pursuant to section 10 of the Act. Black legless lizards are likely to benefit from the permanent maintenance of natural plant communities on HCP lands preserved for the Smith's blue butterfly.

Issue 5: Several area residents pointed out that the black legless lizard is common in residential neighborhoods and on commercial property in the cities of Seaside and Marina. More than 80 residents of the City of Marina reported black legless lizards on their property. The commenters questioned the need to list such a common organism as endangered. An opposing view was presented by other commenters who argued that the lizard is imperiled by human impacts and that Federal listing could provide greater assurances for the survival of the black legless lizard.

Service Response: A questionnaire attached to the City of Marina newsletter, was sent to 7,000 businesses and residences in the spring of 1997. Of 247 responses, 81 (33 percent) of the respondents indicated they had seen legless lizards on their property. Most of the respondents had seen legless lizards within the last 3 years, and many indicated they observe legless lizards year after year. The results of the City of Marina survey are not surprising. Legless lizards are occasionally encountered on residential and commercial property throughout their range. In the Monterey Bay area, it is not unusual for residents of Marina, Seaside, and portions of Monterey and Pacific Grove to encounter black legless lizards on residential and commercial properties. Legless lizards can clearly persist for decades in and around highly altered man-made settings, although this may not be optimal habitat for them. Habitat fragmentation is discussed further in Factor E of the "Summary of Factors Affecting the Species" section of this notice.

Issue 6: One respondent questioned the need for listing the black legless lizard at this time, noting the California Environmental Quality Act (CEQA) and the California Coastal Act recognize the lizard as a special status species.

Service Response: The black legless lizard is often given special consideration in CEQA compliance documents. Legislation and State regulations require mitigation or other compensation for impacts to sensitive or rare species. However, CEQA provides for "Statements of Overriding Consideration" which allow adverse impacts with less than full mitigation. The California Coastal Act regulates development within the coastal zone and has slowed the loss of coastal habitats such as the dune habitats used by black legless lizards.

Issue 7: Several commenters questioned the need for listing at this time because the lizard is very abundant in suitable habitat. On the other hand, other commenters argued that the distribution of legless lizards is patchy, and abundance does not assure survival when the human impacts involve habitat destruction.

Service Response: The black legless lizard, like other small, burrowing reptiles can occur in dense populations, up to several hundred per hectare, in a wide range of habitats (Turner 1977). The distribution of legless lizards within their range, however, is dictated largely by soil texture (Hunt 1997, in press). Thus, the distribution of the black legless lizards in the vicinity of Monterey Bay is expected to be somewhat patchy. The results of surveys conducted under the auspices of the CRMP on the former Fort Ord have conformed to the prediction of a patchy distribution. Primary threats to the lizard identified in the proposed rule involved uncertainties associated with the clean-up and transfer of lands formerly managed by Fort Ord and the invasion of lizard habitat by exotic vegetation (60 FR 39332–39334). The significance of these threats is discussed under factors A and E of the "Summary of Factors Affecting the Species" section.

Issue 8: Two commenters questioned the current severity of the threats to the black legless lizard related to conversion of the dune habitats by invasion of exotic plants such as *Carpobrotus edulis* and *Ammophila arenaria*. The commenters described dune restoration projects in detail, including exotic plant eradication on previously preserved Federal and State lands, newly protected lands associated with the closure of former Fort Ord, and private property, and argued that lizard habitat is becoming more, not less common in the Monterey Bay area. On the other hand, several commenters supported listing because of concerns about invasion of black legless lizard habitat by exotic plant species.

Service Response: Most of the evidence that exotic plants are associated with low abundances of black legless lizards is indirect. Using an intensive sampling method, Bury (1985) demonstrated that black legless lizards were less abundant in mats of Hottentot fig than they were in and around native dune vegetation. Soil chemistry, thermal properties and invertebrate prey abundance differ between dune habitats dominated by *Carpobrotus edulis* and natural dune habitats (Bury 1985; Lawrence Hunt, University of California, Santa Barbara, *in litt.* 1995). Since about 1985, a host of programs on Federal, State, and private lands have been initiated to eradicate exotic plants and restore native plant communities on the dune ecosystems of the Monterey Bay area.

At present, our knowledge of the habitat requirements of the black legless lizard, and of the methods and results

of the ongoing dune restoration efforts suggests that the black legless lizard will benefit substantially if these programs continue. A more complete analysis of impacts of exotic vegetation and dune restoration programs on the black legless lizard is given under Factor E of the "Summary of Factors Affecting the Species" section.

Issue 9: One commenter criticized the Service's heavy reliance on the Bury (1985) status report, which is over 10 years old. The respondent stated that the report is stale and no longer accurate. Citing *Roosevelt Campobello Intern. Park* v. *U. S. E. P. A.*, 684 F.2d 1041, 1052–1055 (1st Cir. 1982) the commenter argued that in cases where insufficient information exists, the Service is obliged to develop further scientific data. Likewise, the same commenter argued, citing *City of Carmel-By-The-Sea* v. *U.S. Dept. Of Transp.*, 95 F.3d 892, 900 (9th Cir. 1996), that reliance on stale scientific data can constitute an abuse of discretion. These arguments based on the same court decisions also were made by a second commenter.

Service Response: Although the Bury (1985) status report on the black legless lizard is now 12 years old, it remains accurate and still useful. It provides an extensive analysis of the distribution of black legless lizards, their variation, and their habitats. The descriptions of collection localities and the habitat conditions are of sufficient detail to allow current workers to evaluate short-term changes in legless lizard habitat. In a clear demonstration that the Bury report still provides valuable historical information, the Service received, during the public comment period, a copy of a site-by-site comparison between the habitat conditions described by Bury in 1985 and the current conditions at those same sites (Michael J. Zander, Zander and Associates, *in litt.* 1995). Without the specific site and habitat condition information contained in the Bury report, such a comparison would not have been possible. Furthermore, the Act is clear in its requirement that listing decisions be based "solely on the best scientific and commercial data *available* [emphasis added] after conducting a review of the status of the species . . ." (16 U.S.C. 1533, section 4(b)(1)(A)). The Service, therefore, is not obliged to develop further scientific data beyond that which is available to it during its status review.

Issue 10: Two commenters supported the listing, registering their concern that hybridization between black and silvery legless lizards represents a substantive threat to the distinctness of the black legless lizard as a distinct biological entity.

Service Response: Anecdotal and published reports of interbreeding between black legless lizards (*Anniela p. nigra*) and silvery legless lizards (*A. p. pulchra*) are common and are based on apparent intermediate morphological traits including scalation, body proportions, and coloration. The currently available biochemical and molecular evidence is insufficient to determine the extent of gene flow, past or present, between populations of legless lizards in the Monterey Bay area. No evidence exists, therefore, that hybridization poses a threat to the black legless lizard.

Summary of Factors Affecting the Species

The Act and implementing regulations found at 50 CFR 424.17(3) provide the basis for determining a species to be endangered or threatened and for withdrawing a proposed rule when the proposal has not been found to be supported by available evidence. The five factors described in section 4(a)(1) of the Endangered Species Act, as they apply to the withdrawal of the proposed listing of the black legless lizard (*Anniella pulchra nigra*), are as follows:

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

Primary threats to the black legless lizard identified under Factor A in the proposed rule were associated with the anticipated closure of Fort Ord, including clean-up and the disposition and future uses of the former Army base, which at the time were unknown (60 FR 39332). Now that the closure of Fort Ord has occurred, the significance of these threats can be more accurately assessed. Under the Installation-Wide HMP, roughly 6,800 ha (17,000 ac) of the former Fort Ord will be permanently protected and managed for plants and wildlife, including the black legless lizard (Michael Houlemard, Fort Ord Reuse Authority, *in litt.* 1997). At the time of the proposed rule, the extent of occupied black legless lizard habitat was uncertain, with estimates ranging from 190 ha (470 ac) to 1,206 ha (2,980 ac). Based on surveys conducted since the proposed rule was published (60 FR 39332), it is now known that at least 546 ha (1,366 ac) of habitat for the black legless lizard will be protected on the former Ford Ord (US Army Corps of Engineers 1997). In addition, at the time of the proposed rule, the black legless lizard was thought to be restricted to sandy coastal plains and dunes (60 FR 39332). It has now been found in a wider variety of habitats, including live oak woodland, non-native grassland/oak woodland ecotone, grassland/shrub, dune scrub, and maritime chaparral (R. Beehler, *in litt.* 1997). The major land manager responsible for maintaining natural habitats in the interior of the former Fort Ord is the BLM, to which the U.S. Army has already transferred several thousand acres. The University of California Natural Reserve System will manage about 240 ha (600 ac) for field research and teaching as well as for protection and enhancement of biological resources. With the implementation of the HMP a large portion of the undeveloped remainder of the interior Monterey Dune sheets will be protected, making the Monterey dune complex (Cooper, 1967) the largest protected dune mass in California. Since 1995, surveys conducted under the auspices of the CRMP team have demonstrated a wide, but apparently patchy, distribution of dark-colored legless lizards on former Fort Ord lands (M. Houlemard, *in litt.* 1997).

The Department of the Army also is currently in the process of transferring over 320 ha (800 ac) of coastal dunes along a roughly 6.4 km (4 mi) reach to the California Department of Parks and Recreation (CDPR). CDPR management plans on Marina State Beach and on the adjoining coastal dune habitat being transferred from the former Fort Ord offer permanent protection to over 340 ha (850 ac) of black legless lizard habitat (U.S. Army Corps of Engineers 1997). Furthermore, as a result of a recent Memorandum of Understanding between the City of Sand City, the Monterey Peninsula Regional Parks District, and the California Coastal Commission, 75 to 80 percent of Sand City coastal habitat adjacent to the former Fort Ord will be preserved as open space (David Pendergrass, Mayor, City of Sand City, *in litt.* 1997).

Other threats to the black legless lizard cited under Factor A in the proposed rule included military activities, off-road vehicle activities, human trampling, and sand mining (60 FR 39332). With the closure of Fort Ord, military activities no longer threaten the species or its habitat. Off-road vehicle use has been prohibited on all public lands along Monterey Bay and coastal portions of the Monterey Peninsula for many years. The effects of human trampling are being reduced by active programs that involve restricting access to designated trails with symbolic and cable fencing and construction of sand ladders and boardwalks. Sand mining occurs at only two sites and, therefore, is not considered to be a significant

threat in the absence of major threats to the species or its habitat.

Although land development was not specifically identified as a major threat in the proposed rule, at least one comment received during the public comment period suggested that this might be the case. A comparison of the habitat conditions at sites described by Bury (1985) with their current status (J. Dack, City of Marina, *in litt.* 1997) shows that only a small amount of black legless lizard habitat, mostly on private lands, has been developed or proposed for development. In fact, during this period both land ownership and land use has favored the protection of natural habitats. The majority of black legless lizard habitat is now in protected status on public lands such as the State Beaches where most dunes have been designated as Natural Preserves. Almost all of the undeveloped private property parcels are already the subject of studies and planning efforts which will, in all likelihood, lead to the resolution of future land uses within the next 10 years. The future land uses on the stretch of private property along the coast between the Salinas River National Wildlife Refuge and Marina State Beach represent, by far, the greatest area of uncertainty about future conversion of black legless lizard habitat for human uses.

Because of the widespread occurrence of the endangered Smith's blue butterfly along the Monterey coast, many future development proposals along the coastline will probably be subject to the Act and the habitat protections that accompany it. On these lands, proposed developments may be permitted via the habitat conservation plan (HCP) process pursuant to section 10 of the Act. Black legless lizards are likely to benefit from the permanent maintenance of natural plant communities on HCP lands preserved for the Smith's blue butterfly. Thus, the Service finds no evidence that future losses of black legless lizard habitat from land conversion constitute a significant threat to the species.

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

Although the black legless lizard is of interest to many people because it is an unusual reptile, overutilization does not appear to be a factor threatening the species (Bury 1985). The State of California prohibits taking or possession of black legless lizards without a special permit (see Factor D). Collection of species by reptile collectors could pose a serious threat to populations that contain few individuals. Legless lizards are not commonly collected or traded, however, and the black legless lizard's small size, secretive habits, and difficult maintenance requirements all suggest that the international trade in reptiles poses an insignificant threat to the taxon.

C. Disease or Predation

The black legless lizard is not known to be subject to catastrophic diseases. In surveys, many individuals have broken or scarred tails, suggesting predation (Bury 1985). Miller (1944) believed that predation by feral house cats may negatively affect some black legless lizard populations. Threats posed by house cats and other predators associated with humans can be expected whenever urban development encroaches on the habitat of this lizard. The well documented persistence of black legless lizards for several decades in urban and suburban areas within the Monterey Bay area and the Monterey Peninsula settings suggests, however, that predation is a minor threat and the risk of even local extirpation due to predators associated with humans is probably low.

D. The Inadequacy of Existing Regulatory Mechanisms

The black legless lizard is listed as a protected reptile under Section 650 of the Title XIV California Sport Fishing Regulations. Except under special permit from the California Department of Fish and Game, collection of black legless lizards is prohibited by the State of California. The habitat of this species is not specifically protected by any State or Federal regulation. Land use on black legless lizard habitat is controlled by local zoning, California State Park regulations on State Beaches such as Marina and Monterey State Beaches, and land management practices on Federal lands, including the Salinas River National Wildlife Refuge, portions of the former Fort Ord and the Naval Post-graduate School. The black legless lizard is often given special consideration in land use planning and in National Environmental Policy Act and CEQA compliance documents. The California Coastal Act regulates development within the coastal zone and has slowed the loss of coastal habitats such as the dunes and sand habitats used by black legless lizards. On Federal lands, the black legless lizard has also been afforded some protection indirectly through special management for Federal listed and candidate plant species that occur in coastal areas. Where the black legless lizard occurs with the endangered Smith's blue butterfly, which is the case throughout much of the black legless lizard's range, protection of habitat for the butterfly is likely to also benefit the lizard. As discussed under Factor A, most undeveloped private property within the range of the black legless lizard is already the subject of impact studies and development planning efforts, and it is highly likely that a stable equilibrium between urbanization and habitat protection will be achieved in the foreseeable future. In addition, the trend toward conversion of natural dune plant communities by exotic vegetation has been reversed (see Factor E) and should soon lead to a significant increase in suitable habitat for the black legless lizard. Therefore, the inadequacy of existing regulatory mechanisms does not constitute a significant threat to the black legless lizard.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Nearly all known coastal black legless lizard localities support populations of exotic plants such as *Carpobrotus edulis*, *Ammophila arenaria*, ice plant (*Mesembryanthemum crystallinum*), and veldt grass (*Ehrharta calycina*). Legless lizards are primarily associated with moist soil and leaf litter under native vegetation such as bush lupine (*Lupinus albifrons*), mock heather (*Haplopappus ericoides*), and sagewort (*Artemisia* sp.) and appear to be less abundant in areas dominated by *Carpobrotus edulis* (Miller 1944, Stebbins 1954, Bury 1985, City of Sand City 1992). During habitat restoration at Asilomar State Beach, where *C. edulis* was removed by hand from over 12 ha (30 ac), black legless lizards were not found in pure stands of *C. edulis*, but were found where *Carpobrotus edulis* grew in mixed stands with native shrubs (Tom Moss, pers. comm. 1993). Pure stands of some exotic plants may alter the substrate or prey base in a way that is detrimental to black legless lizards. While the mechanism is unclear, exotic plants may influence soil temperature or moisture differently than native vegetation. Some types of exotic plants, including ice plants, support a smaller arthropod prey base than native plant communities (Miller 1944, Stebbins 1954, Nagano *et al.* 1981) and it is known that some ice plants can cause increased salt concentrations in soil (Kloot 1983). Bury (1985) speculated that ice plants may make habitat unsuitable for black legless lizards either because they have trouble maintaining their water balance in the substrate, or indirectly through reductions in arthropod abundance.

In his status report, Bury (1985) found widespread patches of ice plant and other exotic vegetation on most of the

sites he surveyed. On undeveloped sites such as the State beaches, as well as on smaller fragments of dunes along developed stretches of coastline, the amount of habitat available to black legless lizards was limited by the presence of exotic plants, primarily *C. edulis*. As a result of a variety of publicly and privately funded restoration projects and volunteer efforts since 1985, however, most extant coastal dunes in the Monterey Bay area have had at least some level of exotic plant removal and native plant revegetation. The sites Bury surveyed which now have dune restoration programs include all of the State beaches, most notably Sunset State Beach, Salinas River State Beach, Marina State Beach, and Asilomar State Beach. Another restoration effort is underway at the U.S. Navy Post-graduate School (Cowan 1996) where, at the time of the Bury status report, the natural dune plant community on this site was restricted to a 0.5-ha (1.2-ac) patch. Over the subsequent 15 years, restoration has occurred on 10 ha (25 ac) of the 16 ha (40 ac) of dunes on the site. Several other sites, most not specifically mentioned by Bury, have ongoing exotic plant removal and revegetation programs, including the Monterey Peninsula Regional Parks District lands near the City of Marina and the old landfill on the Sand City coastline, the old Phillips Petroleum site near the City of Monterey, which has recently been purchased by the CDPR, and the City of Monterey's program at Del Monte Beach. Some dune restoration projects including exotic plant removal and revegetation are also occurring on private property in and around Seaside and Sand City, and on the Monterey Peninsula. Two examples of projects on the Monterey Peninsula are the efforts to protect and manage about 24 ha (60 ac) of created and restored dunes and about 6.8 ha (17 ac) of natural dunes near the golf course at Spanish Bay and the restoration on about 2 ha (5 ac) of dunes at Fan Shell Beach near Spyglass Hill, Cypress Point.

The largest contiguous coastal tract of black legless lizard habitat surveyed by Bury was on the former Fort Ord. Bury identified about 190 ha (470 ac) along a roughly 6.4 km (4 mi) stretch of coastal dunes. At the time, Fort Ord was an active U.S. Army base and the dunes and native vegetation were highly disturbed by past and ongoing military activities. Bury reported that the dunes were covered by *Carpobrotus edulis* and supported little native vegetation. Although Fort Ord has been decommissioned, this habitat remains in much the same condition as it was when Bury described it. However, under the authority of the HMP for the former Fort Ord, over 340 ha (850 ac) along the stretch of beach described by Bury will be transferred from the U.S. Army to the CDPR (U.S. Army Corps of Engineers 1997). The HMP calls for preservation and exotic plant removal, as well as restoration and maintenance of native dune plant communities on over 280 ha (700 ac).

Because the current trend is toward restoration of coast dune ecosystems, it is unlikely that, in the foreseeable future, conversion of black legless lizard habitat by exotic vegetation will occur at levels similar to those between the time of the natural history studies of Miller (1944) and the Bury status review (1985). Most likely, the ratio between exotic and native vegetation in the Monterey Bay area dunes within the foreseeable future will reflect funding levels and commitment to the various restoration programs. Because black legless lizards have been encountered recently on several restoration and revegetation sites on Monterey Bay and the Monterey Peninsula, including Marina State Beach, the U.S. Navy Post-graduate School and Asilomar State Beach, it appears that they are able to live in restored dune habitats.

Although there may be short-term negative effects on black legless lizards from some restoration methods (e.g., the use of glyphosphate instead of hand harvest for *Carpobrotus edulis* removal), the Service is aware of no evidence that any such effects pose a significant threat to the species.

Fragmentation of existing black legless lizard habitat due to the construction of roads, golf courses, and other urban development was identified as a potential threat in the proposed rule (60 FR 39334). However, based on additional review and new information the Service no longer believes that habitat fragmentation poses a significant threat to the species in the foreseeable future. The common occurrence of legless lizards in residential neighborhoods, on agricultural and commercial properties, in and around the roughs adjacent to golf course fairways, and even under paved roadways suggests that this is not a significant threat. Although fragmentation may increase the vulnerability of smaller populations to local extirpation from random events, the large blocks of relatively unfragmented habitat that are already protected, or will likely be protected in the foreseeable future, are sufficient to buffer the effects of random events on larger populations. Therefore, the overall impact of random events to the black legless lizard is unlikely to be significant.

The proposed rule also identified relatively low fecundity in the black legless lizard as a potential threat, because it implied a relatively long population recovery time and a heightened sensitivity to habitat degradation from off-road vehicles, trampling, and other disturbances (60 FR 39334). Because the black legless lizard is now known to occur in many areas protected from such disturbances, and in other areas that will likely be protected from such disturbances in the near future, relatively low fecundity, in and of itself, is not likely to pose a significant threat to the survival of the species.

In the proposed rule (60 FR 39334), the Service also identified strong storms and periodic extremely high tides as potential threats to the species. Because the black legless lizard is now known to occur in protected areas throughout its range, the Service now believes that the threat posed by such rare, random weather events is unlikely to be significant to the survival of the species. There are other random factors with the potential to affect small, isolated populations. There is, however, too little known about population size and how it fluctuates, population structure, and the dispersal capabilities of the black legless lizard to support more than speculation about the potential threat posed by random events on this species. The Service is not aware of any evidence suggesting that random events pose a significant degree of threat to the black legless lizard.

Finding and Withdrawal

The Service carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the black legless lizard. The withdrawal is based primarily on the finding that the black legless lizard is now known to occur in a wider variety of habitats than previously thought and that a large proportion of the remaining habitat of the lizard is already protected from urbanization and commercial development on public lands (U.S. Army Corps of Engineers 1997; D. Pendergrass, *in litt.* 1997; M. Houlemard, *in litt.* 1997), and on the likelihood that widespread losses of habitat due to the invasion of exotic vegetation are unlikely to continue in the foreseeable future. Moreover, the current trend is toward restoration of coastal ecosystems, a trend that should increase the available habitat for the black legless lizard. In addition, because

of the existing protected habitat areas and other areas likely to receive some protection in the foreseeable future, potential threats from habitat fragmentation, relatively low fecundity, and extreme weather events cited in the proposed rule are now considered unlikely to pose significant threats to the survival of the species.

References Cited

A complete list of all references cited herein is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author. The primary author of this document is Steve Morey, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 3310 El Camino, Sacramento, California 95821–6340 (916/979–2710).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 29, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–21565 Filed 8–11–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 63, No. 155
Wednesday, August 12, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff briefing for the Board of Directors.

TIME AND DATE: 2:00 p.m., Thursday, August 20, 1998.

PLACE: Room 0204, South Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: General discussion involving:

1. Current telecommunications industry issues;
2. Retirement of class A stock in FY 1998;
3. Annual dividend rate for class C stock;
4. Liquidating account and Federal Credit Reform;
5. Status of PBO planning;
6. Allowance for loan losses reserve;
7. Annual report for FY 1997; and
8. Administrative issues.

ACTION: Board of Directors Meeting.

TIME AND DATE: 9:00 a.m., Friday, August 21, 1998.

PLACE: The Williamsburg Room, Room 104–A, Jamie L. Whitten Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on the May 15, 1998, Minutes.
3. Report on loans approved in the third quarter of FY 1998.
4. Summary of financial activity for the third quarter of FY 1998.
5. Consideration of resolution to retire class A stock in FY 1998.
6. Consideration of resolution to set annual class C stock dividend rate.
7. Action on the Bank's annual report for FY 1997.
8. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Orren E. Cameron III, Acting Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: August 7, 1998.

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 98–21760 Filed 8–10–98; 2:38 pm]

BILLING CODE 3410–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Passenger Vessel Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of appointment of advisory committee members and date of first meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has decided to establish an advisory committee to assist it in developing a proposed rule on accessibility guidelines for newly constructed and altered passenger vessels covered by the Americans with Disabilities Act. The Passenger Vessel Access Advisory Committee (Committee) includes organizations which represent the interests affected by the accessibility guidelines for passenger vessels. This notice also announces the times of the first Committee meeting, which will be open to the public. A subsequent notice will announce the specific location within the Washington, DC area, where the meeting will be held.

DATES: The first meeting of the Committee is scheduled for September 24 and 25, 1998, beginning at 9:00 a.m. and ending at 5:00 p.m. each day.

ADDRESSES: A subsequent notice will announce the specific location within the Washington, DC area, where the meeting will be held.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–5434 extension 19 (Voice); (202) 272–5449 (TTY). E-mail pvaac@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or computer disk) upon request. This document is also available on the Board's Internet Site (http://www.access-board.gov/rules/pvaac.htm).

SUPPLEMENTARY INFORMATION: On March 30, 1998, the Architectural and Transportation Barriers Compliance Board (Access Board) published a notice of intent to establish an advisory committee to provide recommendations for developing a proposed rule addressing accessibility guidelines for newly constructed and altered passenger vessels covered by the Americans with Disabilities Act. 63 FR 15175 (March 30, 1998). The notice identified the interests that are likely to be significantly affected by the accessibility guidelines: owners and operators of various passenger vessels; designers or manufacturers of passenger vessels; individuals with disabilities; and others affected by accessibility guidelines for passenger vessels.

Over 90 nominations were submitted. Approximately 30 nominations were received from travel consultants. About 17 other nominations were received from individual members of the public who have disabilities (or have family members who have disabilities), most of whom indicated that they have experience with passenger vessels. Eight nominations were received from organizations representing persons with disabilities. Over 15 nominations were received from access consultants and attorneys with experience in accessibility issues. The remaining nominations primarily consisted of organizations representing the passenger vessel industry which includes some State and local government entities.

For the reasons stated in the notice of intent, the Access Board has determined that establishing the Passenger Vessel Access Advisory Committee (Committee) is necessary and in the public interest. The Access Board has appointed 23 members to the Committee from the following organizations:

American Classic Voyages

American Society of Travel Agents, Committee on Travel for Persons with Disabilities
BB Riverboats
Boston Commission for Persons with Disabilities
Chesapeake Region Accessible Boating
Cruise Consultants International
International Council of Cruise Lines
Maine Department of Transportation
National Association of Charterboat Operators
National Tour Association
Paralyzed Veterans of America
Passenger Vessel Association
Port of San Francisco
Princess Cruises
Rhode Island Tourism Division
Self Help for Hard of Hearing People
Society for the Advancement of Travel for the Handicapped
Society of Naval Architects and Marine Engineers
Southeast Alaska Independent Living
Southwest Disability and Business Technical Assistance Center
Transportation Institute
University of Alaska Fairbanks
Washington State Department of Transportation

The Access Board regrets being unable to accommodate all requests for membership on the Committee. In order to keep the Committee to a size that can be effective, it was necessary to limit membership. It is also desirable to have balance among members of the Committee representing different clusters of interest, such as disability organizations and the passenger vessel industry. The Committee membership identified above provides representation for each interest affected by issues to be discussed.

Committee meetings will be open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee. Members of groups or individuals who are not members of the Committee may also have the opportunity to participate with subcommittees of the Committee. The Access Board believes that participation of this kind can be very valuable for the advisory committee process. Additionally, all interested persons will have the opportunity to comment when the proposed accessibility guidelines for passenger vessels are issued in the **Federal Register** by the Access Board.

The meeting will be held at a site accessible to individuals with disabilities. Sign language interpreters and real-time captioning will be provided. Decisions with respect to future meetings will be made at the first meeting. Notices of future meetings will be published in the **Federal Register.**

Thurman M. Davis, Sr.,

Chairman, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 98–21637 Filed 8–11–98; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Technical Advisory Committees; Notice of Recruitment of Private-Sector Members

SUMMARY: Technical Advisory Committees (TACs) advise the Department of Commerce on the technical parameters for export controls applicable to dual-use commodities and technology and on the administration of those controls. The TACs are composed of representatives from industry and Government representing diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of goods, technologies, and software presently controlled for national security, foreign policy, nonproliferation, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. The membership reflects the Department's commitment to attaining balance and diversity. TAC members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members can be permitted access to relevant classified information needed in formulating recommendations to the Department of Commerce. Each TAC meets approximately 4 times per year. Members of the TACs will not be compensated for their services.

Three TACs are currently seeking to fill membership vacancies. Those TACs and the areas in which they advise the Department of Commerce are the following: the Materials TAC—Control List Category 1 (materials, chemicals, microorganisms, and toxins); the Information Systems TAC—Control List Category 3 (electronics—test, inspection, and production equipment section), Category 4 (computers), and Category 5 (telecommunications and information security); and the Sensors and Instrumentation TAC—Control List Category 3 (electronics—systems, equipment, and components section) and Category 6 (sensors and lasters).

To respond to this Notice of Recruitment, please send a fact sheet on your company as well as a resume/biography to the following address: Ms. Lee Ann Carpenter, OAS/EA/BXA MS: 3886C, U.S. Department of Commerce, 15th St. & Pennsylvania Ave., N.W., Washington, D.C. 20230.

Materials may also be faxed to Ms. Carpenter at (202) 501–8024.

DEADLINE: This Notice of Recruitment will be open for 20 days from date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: August 5, 1998.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 98–21555 Filed 8–11–98; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–804; C–122–805]

New Steel Rail, Except Light Rail, From Canada; Notice of Termination of Changed Circumstances Administrative Reviews and Clarification of Scope Language

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Changed Circumstances Administrative Reviews and Clarification of Scope Language.

SUMMARY: On September 15, 1989, the Department of Commerce (the Department) published an antidumping duty order on new steel rail, except light rail, from Canada. The Department published a countervailing duty order on new steel rail, except light rail, from Canada on September 22, 1989. On June 11, 1996, the Department simultaneously initiated antidumping and countervailing duty changed circumstances administrative reviews of these orders and issued the preliminary results of these reviews with intent to revoke the orders in part. The Department is now terminating these reviews.

EFFECTIVE DATE: August 12, 1998.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Tom Futtner, Office of Antidumping and Countervailing Duty Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4114 and (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are as codified at 19 CFR Part 353 (1996).

Background

On August 3, 1989, the Department published the final determinations in the antidumping and countervailing duty investigations (54 FR 31984) of new steel rail, except light rail, from Canada. Subject merchandise was described as rail weighing 60 pounds per yard or more. The Department published the antidumping duty order on new steel rail on September 15, 1989, (54 FR 38263). Following the publication of the antidumping duty order, the Department published the countervailing duty order and an amendment to the final affirmative countervailing duty determination on new steel rail, except light rail, from Canada on September 22, 1989, (54 FR 39032).

On February 1, 1996, Gerdau MRM Steel, Inc. (Gerdau), a Canadian exporter of new steel rail, requested that the Department conduct changed circumstances administrative reviews to determine whether to partially revoke the antidumping and countervailing duty orders with regard to nominal 60 ASCE/ASTM A1–92 new steel rail. The application of these orders to imports of new steel rail other than 60 ASCE/ASTM A1–92 is not affected by these requests.

On March 29, 1996, petitioner, Bethlehem Steel Corp. (Bethlehem), advised the Department that it has no interest in maintaining the antidumping and countervailing duty orders on 60 ASCE/ASTM A1–92 new steel rail. In addition, Gerdau informed the Department that it had canvassed interested parties known to it to be actively involved in the production of 60 ASCE/ASTM A1–92 steel rail in the United States, and had not found any opposition to the revocation of the orders with regard to this steel rail size.

The industry survey and affirmative statement of no interest by petitioner in the antidumping and countervailing duty cases constituted changed circumstances sufficient to warrant the initiation of the changed circumstances reviews pursuant to section 751(b) of the Act. On June 11, 1996, the Department simultaneously initiated the antidumping and countervailing duty changed circumstances administrative reviews and issued the preliminary results of these reviews with intent to revoke the orders in part. In these results, we invited interested parties to comment on the proposed partial revocations of the antidumping and countervailing duty orders with respect to nominal 60 ASCE/ASTM A1–92 new steel rail from Canada.

On June 18, 1996, Steel of West Virginia, Inc., (SWV), a domestic producer of steel rail, objected to the Department's intent to revoke the antidumping and countervailing duty orders with respect to the nominal 60 ASCE/ASTM steel rail size, noting that it had not been canvassed by respondent. Gerdau submitted a rebuttal brief on July 2, 1996, urging the Department to reject SWV's objection. Gerdau argued that SWV did not produce 60 ASCE/ASTM A1–92 steel rail, and if it did, was an insignificant producer. On August 14, 1996, we sent a questionnaire to SWV asking the company to clarify the products it produced. On August 18, 1996, SWV responded with information indicating that it had the production capability and was producing nominal 60 ASCE/ASTM A1–92 steel rail.

Subsequent to the publication of the preliminary changed circumstances results, the Department determined that the scope language in the antidumping and countervailing duty orders required clarification with regard to new steel rail weighing 60 pounds per yard. Specifically, the product description in the original antidumping and countervailing duty petitions, the **Federal Register** notices initiating these two investigations, the preliminary determinations of the Commerce Department and the International Trade Commission (ITC), and the questionnaires used by both the Commerce Department and the ITC all refer to new steel rail as product weighing *more* than 60 pounds per yard (emphasis added). In addition, the petition and the ITC reports identify the only remaining producers of subject rail as Bethlehem and CF&I Steel, Inc. (CF&I Steel), the petitioners in this case. Furthermore, the petitioners referred to West Virginia Steel Corporation and the ITC report referred to SWV as producers of "light rail," or rail that weighs 60 pounds or less per yard. However, in the final Commerce Department determinations, the Department introduced metric quantities of the covered rail characterizing the subject merchandise as "at *least* 30 kilograms per meter or 60 pounds per yard" (emphasis added).

In light of the above, we sent letters to interested parties on March 6, 1997, inviting comments on this language change. In addition, we notified parties that the Department had decided to extend the deadline for the final results of the changed circumstances reviews to consider any comments made by the parties on this potential issue.

On March 20, 1997, Gerdau submitted comments which repeated its justification for partial revocations of the orders with respect to 60 ASCE/ASTM A1–92 new steel rail. On March 27, 1997, Bethlehem submitted rebuttal comments arguing that the Department could not partially revoke the orders with respect to 60 pounds per yard steel rail because, based upon the evidence on the record, these rails were never intended to be covered by the orders. In addition, Bethlehem urged the Department to issue a scope determination that excluded nominal 60 pounds per yard steel rail from the scope of the orders. SWV did not comment.

Based upon a review of documents on the record of this proceeding and the industry analysis contained in the ITC's reports, the Department preliminarily concluded that the scope language of these orders should be clarified to define the excluded light steel rail as rail weighing 60 pounds per yard. (30 kilograms per meter) or less. We issued a preliminary clarification of scope language, giving interested parties an opportunity to submit both comments and rebuttal comments. *See, Memorandum from Richard W. Moreland, Acting Deputy Assistant Secretary, Import Administration, Group II, to Robert S. LaRussa, Assistant Secretary for Import Administration; Preliminary Clarification of Scope Language; November 7, 1997.* We received one comment from Gerdau and addressed it in the final clarification of scope language on May 7, 1998. Also, in the same clarification, we issued revised scope language applicable to both the antidumping and countervailing duty (AD/CVD) orders. *See, Memorandum from Maria Harris Tildon, Acting Deputy Assistant Secretary, Import Administration, Group II, to Robert S. LaRussa, Assistant Secretary for Import Administration; Final Clarification of Scope Language.* The revised scope language is contained in the "Scope of Review" section of this notice below.

While the scope language was clarified regarding 60 pounds per yard

rail, it did not address rail sold according to nominal terms. Consequently, following clarification of the scope language and in accordance with 353.29(a) and (i)(1)(1996) of the Department's regulations, we conducted a scope inquiry to determine whether *nominal* 60 pounds per yard new steel rail was within the scope of these orders (emphasis added). Upon issuing a preliminary scope determination and not receiving comments from interested parties, on June 19, 1998, the Department issued a final scope determination finding nominal 60 pounds per yard steel rail outside of the scope of these orders. *See, New Steel Rail, Except Light Rail from Canada; Final Scope Determination on Steel Rail Model 60 ASCE/ASTM A1–92.*

Scope of Review

The product covered by the antidumping and countervailing duty orders is new steel rail, whether of carbon, high carbon, alloy or other quality steel, and includes, but is not limited to, standard rails, all main line sections (of more than 30 kg. per meter or 60 pounds per yard), heat-treated or head-hardened (premium) rails, transit rails, contact rail (or "third rail") and crane rails. Rails are used by the railroad industry, by rapid transit lines, by subways, in mines and in industrial applications. Specifically excluded from the antidumping and countervailing duty orders are light rail (rails which are 30 kg. per meter or 60 pounds per yard or less). Also excluded are relay rails which are used rails taken up from primary railroad track and relaid in a railroad yard or on a secondary track. The product covered by these antidumping and countervailing duty orders is currently provided for under the following Harmonized Tariff Schedule (HTS) subheadings: 7302.10.1020, 7302.10.40, 7302.10.5000 and 8548.00.0000. Prior to January 1, 1989, such merchandise was classifiable under items 610.2010, 610.2025, 610.2100 and 688.4280 of the Tariff Schedules of the United States Annotated (TSUSA). The HTS and TSUSA numbers are provided for convenience and Customs purposes. The written description of the scope of these orders remains dispositive.

Termination of Changed Circumstances Reviews

Because nominal 60 pounds per yard steel rail is not within the scope of these orders, there are no grounds upon which to conduct changed circumstances reviews with respect to this size rail. Accordingly, the Department is now terminating these antidumping and countervailing duty changed circumstances reviews.

The Department will instruct the U.S. Customs Service (Customs) to continue to suspend entries of subject merchandise at the appropriate cash deposit rate for all entries of new steel rail from Canada, except light rail.

This notice also serves as a reminder to parties subject to administrative protection orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) and 355.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice of termination of changed circumstances reviews is in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 353.22(f), 353.25(d), 355.22(h), and 355.25(d) of the Department's regulations.

Dated: August 3, 1998.

Robert S. LaRussa,

Assistant Secretary, Import Administration.

[FR Doc. 98–21635 Filed 8–11–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–807]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Japan: Recission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Recission of Antidumping Duty Administrative Review.

SUMMARY: On July 28, 1998, the Department of Commerce initiated an administrative review of the antidumping duty order on industrial belts and components and parts thereof, whether cured or uncured, from Japan for NOK Corporation, a manufacturer of industrial belts. This administrative review was requested by NOK Corporation and is for the period June 1, 1997, through May 31, 1998. The Department is rescinding this review after timely receiving from NOK Corporation, a withdrawal of its request for review.

EFFECTIVE DATE: August 12, 1998.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Wendy Frankel, Office of AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4793 and (202) 482–5849, respectively.

Background

On June 30, 1998, NOK Corporation (NOK), requested that the Department conduct an administrative review of the subject merchandise it exported from Japan for the period June 1, 1997, through May 31, 1998.

On July 28, 1998, the Department published in the **Federal Register** (63 FR 40258) a notice of initiation of administrative review with respect to NOK for the period June 1, 1997, through May 31, 1998. On July 28, 1998, NOK requested that it be allowed to withdraw its request for a review and that the review be terminated.

Pursuant to 19 CFR 351.213(d)(1)(1998), the Department may allow a party that requests an administrative review to withdraw such request within 90 days of the date of publication of the notice of initiation of the requested review. Because NOK's request for termination was submitted within the 90-day time limit, and there were no requests for review from other interested parties, we are rescinding this review. We will issue appropriate appraisement instructions directly to the U.S. Customs Service.

This notice is in accordance with section 777(i) of the Tariff Act of 1930, as amended and 19 CFR 351.213(d)(4)(1998).

Dated: August 6, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 98–21636 Filed 8–11–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Certain Welded Carbon Steel Pipes and Tubes from Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 12, 1998.

SUMMARY: The Department of Commerce (the Department) is extending the time

limit for the preliminary and final results of the 1996–97 antidumping duty administrative review for the antidumping order on certain welded carbon steel pipes and tubes from Thailand, pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, "the Act").

FOR FURTHER INFORMATION CONTACT: John Totaro or Dorothy Woster, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–1374 or 482–3362, respectively.

SUPPLEMENTARY INFORMATION: Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. In the instant case, the Department has determined that it is not practicable to complete the review within the statutory time limit. *See* Memorandum from Roland L. MacDonald to Robert S. LaRussa (August 5, 1998).

Because it is not practicable to complete this review within the time limits mandated by the Act (245 days from the last day of the anniversary month for preliminary results, 120 additional days for final results), in accordance with Section 751(a)(3)(A) of the Act, the Department is extending the time limit for the final results until October 5, 1998

Dated: August 5, 1998.

Roland L. MacDonald,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 98–21633 Filed 8–11–98; 8:45 am]

BILLING CODE 3510–PS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815, C–475–825, and C–580–835]

Notice of Postponement of Preliminary Determination for Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils From France, Italy, and the Republic of Korea

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: August 12, 1998.

FOR FURTHER INFORMATION CONTACT: Marian Wells (France), at (202) 482–6309; Cynthia Thirumalai (Italy), at (202) 482–4087; and Eva Temkin (the Republic of Korea), at (202) 482–1767, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Postponement

On June 30, 1998, the Department of Commerce (the Department) initiated countervailing duty investigations of stainless steel sheet and strip in coils from France, Italy, and the Republic of Korea. On July 22, 1998, in accordance with 19 CFR 351.205(e) of the Department's regulations, petitioners made a timely request that the Department postpone its preliminary determinations. As we find no compelling reasons to deny this request, we are postponing the preliminary determinations in these investigations to no later than November 9, 1998, pursuant to section 703(c)(1)(A) of the Tariff Act of 1930, as amended.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: August 6, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–21634 Filed 8–11–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Workshop to Discuss the Development and Implementation of a Common Criteria Evaluation and Validation Scheme for Information Technology (IT) Security

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of Public Workshop.

SUMMARY: The National Institute of Standards and Technology (NIST) and the National Security Agency (NSA), partners in the National Information Assurance Partnership (NIAP), invite interested parties to attend a public workshop to discuss the development of a Common Criteria Evaluation and Validation Scheme for IT Security. The purpose of the Common Criteria Scheme is to meet the needs of industry and government and for cost-effective security evaluation of IT products, (e.g., operating systems, database management systems, firewalls). The proposed scheme represents a significant change to previous IT product evaluation programs conducted by NSA and completes the transition of security testing and evaluation from the government to the private sector.

DATES: The workshop will take place on September 9, 1998 from 9:00 A.M. until 5:00 P.M. Interested parties should contact NIST at the address or telephone numbers listed below to confirm their interest in attending the workshop.

ADDRESSES: The workshop will take place at the Sheraton International Hotel (BWI Airport), 7032 Elm Road, Baltimore, MD 21240, phone: (410) 859–3300, fax: (410) 859–0565.

FOR FURTHER TECHNICAL INFORMATION CONTACT: Dr. Ron S. Ross, Information Technology Laboratory, National Institute of Standards and Technology, 820 West Diamond Avenue (Room 426), Gaithersburg, MD 20899, email: *rross@nist.gov*, phone: (301) 975–5390, fax: (301) 948–0279. Alternate point of contact is: Ms. Robin Medlock, Information Technology Laboratory, National Institute of Standards and Technology, email: rmedlock@nist.gov, phone: (301) 975–5017, fax: (301) 948–0279. Detailed workshop information (to include copies of draft documents related to the Common Criteria Scheme) is available on the NIAP web site at http://niap.nist.gov. Laboratory accreditation information can be accessed at the following web sites: International Laboratory Accreditation Co-operation (ILAC), *http://www.ilac.org*, Asia Pacific Laboratory Accreditation Cooperation (APLAC), *http://www.ianz.govt.nz/aplac/*, National Voluntary Laboratory Accreditation Program (NVLAP) *http://ts.nist.gov/nvlap*.

WORKSHOP REGISTRATION: To register for the workshop, visit the NIAP web site at *http://niap.nist.gov* and follow the link for Events. Registration must be received by August 26, 1998. For confirmation or additional information, contact Lazer Fuerst at Mitretek Systems, phone: (703) 610–1689, fax: (703) 610–1699, email: *scheme-workshop@mitretek.org*.

SUPPLEMENTARY INFORMATION: Recent advances in information technologies and the proliferation of computing systems and networks world-wide have raised the level of concern about security in both the public and private sectors. Security concerns are motivated by a growing use of IT products throughout industry and government in a variety of critical areas—from electronic commerce to national defense. Consumers have access to a growing number of security-enhanced IT products with different capabilities and limitations and must make important decisions about which

products provide an appropriate degree of protection for their information.

In order to help consumers choose commercial off-the-shelf IT products, NIST and NSA are developing a program to evaluate conformance of IT products to international standards. This program has the following objectives:

- To develop, operate, and maintain a Common Criteria Evaluation and Validation Scheme;
- To provide for security evaluations in private sector laboratories;
- To ensure that evaluations of IT products are performed to consistent standards and to increase confidence in the security of those products;
- To improve the availability of evaluated IT products;
- To create a climate for IT security products of "Make them here, test them here, sell them world-wide".

The proposed scheme will promote evaluations of IT products conducted in the private sector by accredited testing laboratories. Products will be evaluated against the Common Criteria for Information Technology Security Evaluation, an emerging International Standards Organization (ISO) standard. Evaluation results will be validated by NIAP leading to the issuance of a validation certificate and placement on a validated products list. Certificates for the validated products will be recognized by participants in mutual recognition agreements based on the Common Criteria, thus reducing the need for multiple security evaluations.

This workshop is for the following audiences:

- Manufacturers, developers, and integrators of IT products interested in having their products evaluated against the Common Criteria;
- Testing laboratories interested in evaluating IT products to the Common Criteria;
- Government and private sector consumers desiring IT products evaluated against the Common Criteria and validated by NIAP.

The workshop will cover a variety of topics to include:

- Introduction to IT product security evaluation;
- Overview of the Common Criteria Scheme;
- Status report on the Common Criteria and Common Evaluation Methodology;
- Laboratory accreditation;
- Validation of evaluation results by NIAP.

Dated: August 6, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–21630 Filed 8–11–98; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080498F]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of its Ad Hoc Finfish Stock Assessment Panel (Panel).

DATES: The meeting of the Panel will be held beginning at 1:00 p.m. on Monday, August 24, 1998 and will conclude by 12:00 noon on Thursday, August 27, 1998.

ADDRESSES: The meeting will be held at the Gulf Coast Research Laboratory, 703 East Beach Drive, Ocean Springs, MS.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Panel will be re-convened to develop additional alternatives for the overfishing criteria as required by the Sustainable Fisheries Act (SFA). In a previous meeting held June 22–25, 1998, the Panel developed a generalized procedure for selecting proxies for expressing maximum sustainable yield (MSY) and optimum yield (OY) in terms of spawning potential ratio (SPR). The Panel discussed, but did not come to a consensus on, the use of the ratio of natural mortality rate to growth rate coefficients (the M/K ratio) as a scaling factor for setting appropriate levels of SPR. When it reconvenes, the Panel will re-examine the use of M/K ratios as a basis for resiliency of fish to overfishing. In addition, the Panel will examine additional alternatives for MSY proxies for red snapper, king mackerel, and red drum based on juvenile fish recruitment, stock biomass levels, or other relevant indices.

Although other issues not contained in this agenda may come before the Panels for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Panel action will be restricted to those issues specifically identified in the agenda listed in this notice.

A copy of the agenda can be obtained by contacting the Gulf Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by August 17, 1998.

Dated: August 5, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–21534 Filed 8–7–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Disclosure Document Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Robert J. Spar, Patent and Trademark Office, Washington, D.C. 20231, by telephone at (703) 305–9285 or by facsimile transmission to (703) 308–6916.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Disclosure Document Program allows inventors to submit papers that provide evidence of the date of conception of an invention. The disclosure document papers will be

retained by the PTO for two years, during which time the inventors should file a patent application if patent protection is desired.

II. Method of collection

By mail, facsimile and hand-carry when the inventor desires to participate in the information collection.

III. Data

OMB Number: 0651–0030.
Form Number: PTO/SB/95.
Type of Review: Revision of a currently approved collection.
Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, farms, state, local or tribal governments, and the Federal Government.

Estimated Number of Respondents: 27,000 responses per year.
Estimated Time Per Response: It is estimated to take approximately 12 minutes to complete a disclosure document deposit request.
Estimated Total Annual Respondent Burden Hours: 5,400 hours per year.
Estimated Total Annual Respondent Cost Burden: $54,000 per year.

Title of form	Form Nos.	Estimated time for response	Estimated annual burden hours	Estimated annual responses
Disclosure Document Deposit Request	PTO/SB/95	12 mins	5,400	27,000
Totals			5,400	27,000

Note: The time estimate for the form includes the time to prepare the invention disclosure documents.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: August 6, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–21566 Filed 8–11–98; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent Application Ser. No. 09/007,826 entitled "Phthalonitrile Prepolymerization Composition," Navy Case No. 78596.

ADDRESSES: Requests for copies of the patent application cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: August 4, 1998.

Saundra K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 98–21563 Filed 8–11–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Dow-United Technologies Composite Products, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Dow-United Technologies Composite Products, Inc., a revocable, nonassignable, exclusive license in the United States and certain foreign countries, to practice the Government owned inventions described in U.S. Patent Nos. 4,223,123 entitled "Aliphatic Phenoxy Polyphthalocyanine"; 4,259,471 entitled "Polyphenylether-Bridged Polyphthalocyanine"; 4,304,896 entitled "Polyphthalocyanine Resins"; 4,408,035 entitled "Phthalonitrile Resin from Diphthalonitrile Monomer and Amine"; 4,410,676 entitled "Phenolic-Cured Phthalonitrile Resins"; 5,003,039 entitled "Amino Phenyl Containing Curing Agent for High Performance Phthalonitrile Resin"; 5,208,318 entitled "Phosphazene-Containing Amine as Curing Agent for Phthalonitrile-Base Polymer"; 5,247,060 entitled "Curing Phthalonitriles with Acid"; 5,389,441 entitled "Phthalonitrile Prepolymer as High Temperature Sizing Material for Composite Fibers"; and U.S. Patent Applications 08/940,043 entitled "Fiber-Reinforced Phthalonitrile Composite Cured with Low-Reactivity Aromatic Amine Curing Agent"; and 09/007,826 entitled "Phthalonitrile Prepolymerization Composition" in the field of high temperature resins for aircraft components.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than October 13, 1998.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: August 4, 1998.

Saundra K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 98–21562 Filed 8–11–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Department of Energy (DOE) intends to renew an information collection package with the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

The Industrial Relations collection package, OMB Control No.1910–0600, collects information from DOE's Management and Operating (M&O) Contractors, and Management and Operating Type (M&O Type) Contractors concerning the management and administration of their workforce. This information is used to exercise management oversight and cost control of our contracts and the application of statutory and contractual requirements. The collection of this data is critical to the Department. It is used to ensure that the contractors satisfy their contractual obligations; contract funds are expended as intended; and to detect and eliminate fraud, waste, and abuse. The data collected involves contractor compensation, pension, health and welfare data insurance claims, and employment type information.

DATES AND ADDRESSES: Comments regarding this information collection package should be submitted to the OMB Desk Officer at the following address no later than September 11, 1998: OMB Desk Officer, Office of Management and Budget (OIRA), Room 3001, New Executive Office Building, Washington, DC 20503.

If you wish to submit comments, but find it difficult to do so within the time period allowed, please notify the OMB Desk Officer of your intent as soon as possible. The Desk Officer may be reached at (202) 395–3087. In addition, please notify the DOE contact listed below.

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Mary Ann Wallace, Records Management Team (HR–424), Department of Energy, Washington, DC 20585, (301) 903–4353.

SUPPLEMENTARY INFORMATION: This package contains the following information: (1) Title of the information collection package; (2) current OMB control number; (3) type of respondents; (4) estimated number of respondents; (5) estimated total number of burden hours, including hours required to provide and review the data; (6) purpose; and (7) the number of collection categories.

Package Title: Industrial Relations.

Current OMB No.: 1910–0600.

Type of Respondents: DOE Management and Operating Contractors (M&O), and Management and Operating type (M&O Type) Contractors.

Estimated Number of Responses: 693

Estimated Total Burden Hours: 27,722

Purpose: This information is required for management oversight of DOE M&O and M&O Type Contracts/Contractors and to ensure that the programmatic and administrative management requirements of the contract are managed efficiently and effectively. This package contains 27 categories of information and/or record keeping requirements.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, on August 6, 1998.

Stephen J. Michelsen,

Director, Office of Contract and Resource Management.

[FR Doc. 98–21599 Filed 8–11–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Wednesday, August 26, 1998: 6:00 p.m.–9:00 p.m.; 6:30 p.m. to 7:00 p.m. (public comment session).

ADDRESSES: Onate Monument and Visitors' Center, Highway 285, Alcalde, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Northern New Mexico Citizens' Advisory Board, Los Alamos National Laboratory, 528 35th Street, Los Alamos, New Mexico 87544, (505) 665–5048.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:00 p.m. Call to Order by DOE

6:00 p.m. Welcome by Chair, Roll Call, Approval of Agenda and Minutes

6:30 p.m. Public Comments

7:00 p.m. Break

7:15 p.m. Board Business

9:00 p.m. Adjourn

Public Participation: The meeting is open to the public. The public may file written statements with the Committee, either before or after the meeting. A sign-up sheet will also be available at the door of the meeting room to indicate a request to address the Board. Individuals who wish to make oral presentations, other than during the public comment period, should contact Ms. Ann DuBois at (505) 665–5048 five (5) business days prior to the meeting to request that the Board consider the item for inclusion at this or a future meeting. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Ms. M.J. Byrne, Deputy Designated Federal Officer, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on August 6, 1998.

Althea T.Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–21598 Filed 8–11–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–318–001]

ANR Storage Company; Notice of Compliance Filing

August 7, 1998.

Take notice that on August 4, 1998, ANR Storage Company (ANRS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Fourth Revised Sheet No. 153, to be effective August 1, 1998.

ANRS states that the attached tariff sheet is being filed in compliance with the Commission's Order issued on July 24, 1998 in the above captioned docket. The order required ANR to delete the reference to GISB Standard 4.3.4.

ANRS states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21625 Filed 8–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–324–001]

Blue Lake Gas Storage Company; Notice of Compliance Filing

August 7, 1998.

Take notice that on August 4, 1998, blue Lake Gas Storage Company (Blue Lake) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Fourth Revised Sheet No. 153, to be effective August 1, 1998.

Blue Lake states that the attached tariff sheet is being filed in compliance with the Commission's Order issued on July 27, 1998, in the above captioned docket. The order required Blue Lake to delete the reference to GISB Standard 4.3.4.

Blue Lake states that copies of the filing were served upon the company's jurisdictional customer.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21626 Filed 8–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–705–000]

Colorado Interstate Gas Company; Notice of Request Under Blanket Authorization

August 7, 1998.

Take notice that on July 31, 1998, Colorado Interstate Gas Company (CIG), P. O. Box 1087, Colorado Springs, Colorado 74101, filed in Docket No. CP98–705–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon the Antelope Ridge Meter Station by sale of BTA Oil Producers (BTA), located in Lea County, New Mexico, under CIG's blanket certificate issued in Docket No. CP83–21–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG proposes to abandon the Antelope Ridge Meter Station, located in Section 24, Township 23 South, Range 34 East, Lea County, New Mexico. CIG declares that the meter station was authorized pursuant to an order that was issued March 26, 1976 in Docket No. CP75–189. CIG states that the gathering facilities upstream of the Antelope Ridge Meter Station were originally owned and operated by CIG and the meter measured gas into Natural Gas Pipeline Company of America's transmission system. CIG asserts that they abandoned the upstream gathering facilities in its spindown filing by transfer to CIG Field Services. CIG declares that a final Order Denying Rehearing and Dismissing Protect authorizing abandonment was issued on September 25, 1996, in Docket No. CP96–41. CP96–41. CIG states that CIG Field Services has now entered into an agreement to sell the upstream gathering facilities to BTA and as the Antelope Ridge Meter Station is on CIG's books as a transmission system facility, CIG is proposing to abandon this facility by sale to BTA.

Any person or the Commission's staff may, within 45 days after issuance of the Instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–21620 Filed 8–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–87–000]

Kentucky West Virginia Gas Company, L.L.C.; Notice of Refund Report

August 7, 1998.

Take notice that on July 29, 1998, Kentucky West Virginia Gas Company, L.L.C., (Kentucky West) tendered for filing a report summarizing the refunds of GRI overcollections which were credited to the July billing invoice of its sole eligible customers.

Kentucky West states that on May 29, 1998, it received a refund from GRI of $36,651 for collections in excess of 105% of Kentucky West 1997 GRI funding level. Kentucky West states that it credited this amount to the account of its sole eligible firm customers.

Kentucky West states that a copy of its report has been served on its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 14, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21621 Filed 8–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–373–014]

Koch Gateway Pipeline Company; Notice of Filing

August 6, 1998.

Take notice that on August 4, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective September 1, 1998:

Fifth Revised Volume No. 1
Twenty-third Revised Sheet No. 20
Twentieth Revised Sheet No. 21
Twenty-first Revised Sheet No. 22
Twenty-fourth Revised Sheet No. 24
Fifth Revised Sheet No. 28
Second Revised Sheet No. 304
Third Revised Sheet No. 1500
Fifth Revised Sheet No. 1501
Second Revised Sheet No. 3612
First Revised Sheet No. 3613
Original Sheet No. 3614

Koch states that the purpose of this filing is to place the rates and certain terms and conditions into effect related to the Offer of Settlement and Stipulation and Agreement (Settlement) resolving all aspects of Koch's costs of service and rate design in Docket No. RP97–373 which was accepted by the Order issued August 3, 1998. These rates are based on a cost of service of $187,980,052, a decrease of $56,022,946 from the cost of services reflected in the December 1, 1997, motion rates currently in effect. The rates will be subject to refund pending a final Commission Order approving the Settlement. In accordance with the terms of the settlement, an Order will become final on the last date for filing for rehearing when no such request has been filed or the date of a Commission Order on all requests for rehearing.

Koch also states that it has served copies of the instant filing upon each affected customer, interested state commissions, and other parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21569 Filed 8–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–261–001]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

August 7, 1998.

Take notice that on August 5, 1998, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sub. Second Revised Sheet No 457 and Bus. First Revised Sheet No. 458, with an effective date of August 1, 1998.

National Fuel states that the purpose of this filing is to submit tariff sheets revised to conform to the Commission letter order issued on July 24, 1998, in Docket No. RP98–261–000 and to conform to the GISB Standards incorporated by Order No. 587–G, Standards for Business Practices of Interstate Natural Gas Pipelines.

National Fuel states that it is serving copies of this filing with its firm customers, interested state commissions and each person designated on the official service list compiled by the Secretary. Copies are also being served on all interruptible customers as of this date.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21629 Filed 8–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–370–000]

Northwest Pipeline Corporation; Notice of Petition for Grant of Limited Waivers of Tariff

August 7, 1998.

Take notice that on August 3, 1998, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(5), Northwest Pipeline Corporation (Northwest) tendered for filing a Petition for Grant of Limited Waivers of Tariff.

Northwest seeks a waiver of its applicable tariff provisions in order (1) to allow Pacific Interstate Gas Transmission Company (Pacific) to permanently transfer its firm transportation capacity on Northwest to Pan-Alberta Gas (U.S.) By assignment of the underlying agreements under terms acceptable to Northwest and (2) to allow Pan-Alberta (U.S.) to retain the priority of service transportation service agreement.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customers and upon affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions

or protests must be filed on or before August 14, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21627 Filed 8–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–373–000]

Questar Pipeline Company; Notice of Tariff Filing

August 7, 1998.

Take notice that on August 5, 1998, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 67, First Revised Sheet No. 87 and Second Revised Sheet No. 95.

Questar states that the purpose of this filing is three fold. First, to make a technical correction in § 6.24(b) of the General Terms and Conditions of Questar's tariff; second, to explain that Questar's standard calibration cycle is quarterly, rather than monthly and third, to provide for notification, via electronic means, of a force majeure condition on the pipeline.

Questar states further that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21628 Filed 8–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–289–001]

Texas Gas Transmission Corporation; Notice of Waiver Request

August 5, 1998.

Take notice that on July 31, 1998, Texas Gas Transmission Corporation (Texas Gas) filed a request for a waiver from the Commission's requirement to comply with 18 CFR 284.10(c)(3)(iii) regarding an electronic cross-reference table correlating the names of its shippers with their DUNS numbers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided on or before August 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21570 Filed 8–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–316–001]

Williams Gas Pipelines Central, Inc.; Notice of Compliance Filing

August 7, 1998.

Take notice that on July 31, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with the proposed effective date of August 1, 1998:

Substitute First Revised Sheet No. 297

Williams states that on July 1, 1998, it made a filing in compliance with Order No. 587–G. By letter order issued July 21, 1998, the Commission directed Williams to file a revised tariff sheet to delete GISB Standard Number 4.3.4 and to add GISB Standard Numbers 1.4.6, 2.4.6, 4.3.16, and 5.3.30. Williams states that the filing is being made to comply with the order.

Williams states that a copy of its filing was served on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.311 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21624 Filed 8–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–24–025, et al.]

Enron Power Marketing, Inc., et al., Electric Rate and Corporate Regulation Filings

August 3, 1998.

Take notice that the following filings have been made with the Commission:

1. Enron Power Marketing, Inc.

[Docket No. ER94–24–025]

Take notice that on July 29, 1998, pursuant to Section 35.15(c), 18 CFR 35.15(c), of the Commission's regulations, Enron Power Marketing, Inc. (EPMI), filed a notice of termination of its Confirmations with The Power Company of America, L.P. (PCA), entered into between EPMI and PCA EPMI's Rate Schedule FERC No.

In the alternative, EPMI has filed a motion for waiver of the Commission's 60-day prior notice requirement to permit the termination to be effective on July 8, 1998, for good cause shown.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. The DTE Energy Trading, Inc.

[Docket No. ER97–3834–003]

Take notice that on July 29, 1998, The DTE Energy Trading, Inc., tendered for filing its report of transactions for the second calendar quarter of 1998 which ended on June 30, 1998.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Bangor Energy Resale, Inc.

[Docket No. ER98–459–003]

Take notice that on July 29, 1998, Bangor Energy Resale, Inc. submitted a Quarterly Report of Transactions for the period April 1 through June 30, 1998. This filing was made in compliance with the Commission order dated December 23, 1997 in Docket No. ER98–459–000.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Conectiv Energy Supply, Inc.

[Docket No. ER98–2045–002]

Take notice that on July 29, 1998, Conectiv Energy Supply, Inc. (Conectiv) tendered for filing a summary of short-term transactions made during the second quarter of calendar year 1998 under Conectiv's Market-Based Sales and Resale Transmission and Ancillary Services Tariff, Rate Schedule FERC No. 1, filed by Conectiv in Docket No. ER98–2045–000.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Washington Water Power

[Docket No. ER98–2721–000]

Take notice that on July 29, 1998, Washington Water Power (WWP), tendered with the Federal Energy Regulatory Commission, pursuant to 18 CFR Section 35.13, and in accordance with the Commission's letter order dated June 30, 1998, an amended unexecuted Service Agreement and Certificate of Concurrence under WWP's Electric Tariff First Revised Volume No. 9, with Participants in the California Power Exchange.

The Commission's June 30 letter order directed WWP to list the customer as Participants in the California Power Exchange rather than as the California Power Exchange. WWP requests waiver of the prior notice requirement and requests an effective date of April 1, 1998.

The Commission's June 30 letter order also directed WWP to provide information regarding the types of power to be sold to the California Independent System Operator (California ISO) under WWP's market-based tariff. In its amended filing, WWP states that it expects to sell economy energy service, firm capacity service, and firm energy service to the California ISO when and as appropriate. WWP also stated in its amended filing that if permitted in the future, WWP may bid into the auction to sell Replacement Reserve Service to the California ISO under its market-based rate tariff authority.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Carolina Power & Light Company

[Docket No. ER98–3948–000]

Take notice that on July 29, 1998, Carolina Power & Light Company (CP&L), tendered for filing executed Service Agreements with Alabama Electric Cooperative, Inc.; Atlantic City Electric Company; Columbia Energy Power Marketing Corporation; DTE Energy Trading; Engage Energy US, L.P.; Illinois Power Company; and Strategic Energy Ltd. under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. These Service Agreements supersede the unexecuted Agreements originally filed in Docket No. ER98–3385–000.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Griffin Energy Marketing, L.L.C.

[Docket No. ER98–3949–000]

Take notice that on July 29, 1998, Griffin Energy Marketing, L.L.C. (GEM) tendered for filing a Notice of Cancellation and Motion for Waiver of the 60-Day Notice Requirement Under 35.15, relating to the following agreement: Electric Power Service Agreement dated January 26, 1998 between GEM and The Power Company of America, L.P., entered under GEM's Rate Schedule FERC No. 1.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Western Resources, Inc.

[Docket No. ER98–3951–000]

Take notice that on July 29, 1998, Western Resources, Inc., tendered for filing an agreement between Western Resources and Enron Power Marketing, Inc. Western Resources states that the purpose of the agreement is to permit the customers to take service under Western Resources' market-based power sales tariff on file with the Commission. The agreement is proposed to become effective July 1, 1998.

Copies of the filing were served upon Enron Power Marketing, Inc. and the Kansas Corporation Commission.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Public Service Corp.

[Docket No. ER98–3952–000]

Take notice that on July 29, 1998, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Short Term Firm Point-To-Point Transmission Service Agreement between WPSC and Merchant Energy Group of the Americas, Inc., providing for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Public Service Corp.

[Docket No. ER98–3953–000]

Take notice that on July 29, 1998, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between WPSC and Merchant Energy Group of the Americas, Inc., provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Unicom Power Marketing, Inc.

[Docket No. ER98–3955–000]

Take notice that on July 30, 1998, Unicom Power Marketing, Inc. (Unicom), submitted its quarterly market-based transaction report for the calendar quarter ending June 30, 1998.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Oklahoma Gas and Electric Co.

[Docket No. ER98–3956–000]

Take notice that on July 29, 1998, Oklahoma Gas and Electric Company (OG&E), tendered for filing service agreements for parties to take service under its short-term power sales agreement.

Copies of this filing have been served on each of the affected parties, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company, New York, Inc.

[Docket No. ER98–3957–000]

Take notice that on July 29, 1998 Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Coral Power L.L.C. (Coral).

Con Edison states that a copy of this filing has been served by mail upon Coral.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–3958–000]

Take notice that on July 29, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm point-to-point transmission service pursuant to its Open Access Transmission Tariff to PP&L Inc. (PP&L).

Con Edison states that a copy of this filing has been served by mail upon PP&L.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–3959–000]

Take notice that on July 29, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm point-to-point transmission service pursuant to its Open Access Transmission Tariff to Coral Power L.L.C. (Coral).

Con Edison states that a copy of this filing has been served by mail upon Coral.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–3961–000]

Take notice that on July 29, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm point-to-point transmission service pursuant to its Open Access Transmission Tariff to PP&L Energy Marketing (PP&L).

Con Edison states that a copy of this filing has been served by mail upon PP&L.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–3960–000]

Take notice that on July 29, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm point-to-point transmission service pursuant to its Open Access Transmission Tariff to PP&L Energy Marketing (PP&L).

Con Edison states that a copy of this filing has been served by mail upon PP&L.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Commonwealth Edison Co.

[Docket No. ER98–3962–000]

Take notice that on July 30, 1998, Commonwealth Edison (Edison) submitted its quarterly market-based transaction report for the calendar quarter ending June 30, 1998.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Florida Power Corp.

[Docket No. ER98–3964–000]

Take notice that on July 29, 1998, Florida Power Corporation submitted a report of short-term transactions that occurred under its Market-Based Rate Wholesale Power Sales Tariff (FERC Electric Tariff, Original Volume No. 8, and First Revised Volume No. 8) during the quarter ending June 30, 1998.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Coral Power, L.L.C.

[Docket No. ER98–3965–000]

Take notice that on July 29, 1998, Coral Power, L.L.C. (Coral), filed a notice of termination and alternative request for waiver of the 60-day advance-notice requirement, to be effective July 1, 1998, relating to Coral's termination of power sales confirmations with Federal Energy Sales, Inc., conducted pursuant to the Western Systems Power Pool Agreement.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Green Mountain Power Corp.

[Docket No. ER98–3967–000]

Take notice that on July 29, 1998, Green Mountain Power Corporation, tendered for filing service agreements pursuant to Green Mountain's FERC Electric Tariff No. 2. Green Mountain requests an effective date of July 1, 1998 for the service agreement with H.Q. Energy Services (U.S.) Inc., an effective date of September 13, 1996 for the service agreement with AIG Trading and an effective date of August 1, 1998 for the other service agreements.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Coral Power, L.L.C.

[Docket No. ER98–3968–000]

Take notice that on July 29, 1998, Coral Power, L.L.C. (Coral), filed a notice of termination and alternative request for waiver of the 60-day advance-notice requirement, to be effective June 30, 1998, relating to Coral's termination of power sales confirmations with The Power Company of America, L.P., conducted pursuant to the Western Systems Power Pool Agreement.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Green Mountain Power Corp.

[Docket No. ER98–3969–000]

Take notice that on July 29, 1998, Green Mountain Power Corporation tendered for filing a Contract with Hydro-Qúbec for the purchase of call options by Hydro-Québec. Green Mountain requests an effective date of August 1, 1998.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Long Island Lighting Company

[Docket No. ER98–3970–000]

Take notice that on July 29, 1998, the Long Island Power Authority (Authority), on behalf of its subsidiary, Long Island Lighting Company (LILCO), d/b/a LIPA tendered for filing Notices of Cancellation of Service Agreement Nos. 1 through 54 under LILCO's Power Sales Tariff, FERC Electric Tariff No. 1.

The Authority requests that the Commission deem that these notices of cancellation were effective as of May 29, 1998, the date of LIPA's purchase of LILCO. The cancellation is attributable to the purchase of LILCO by the Authority, a corporate municipal instrumentality and political subdivision of the State of New York. LILCO, now doing business as LIPA, is now a municipality within the meaning of Section 201(f) of the Federal Power Act and is no longer required to file or maintain its contracts as rate schedules

with Commission. The underlying contracts are not being terminated.

Notice of the proposed cancellation and the appropriate rate schedule designation has been served upon the following:

Service Agreement No. 1—Enron Power Marketing, Inc.
Service Agreement No. 2—Coastal Electric Services Company
Service Agreement No. 3—New York Power Authority
Service Agreement No. 4—CNG Power Services Corporation
Service Agreement No. 5—PECO Energy Company
Service Agreement No. 6—Phibro Inc.
Service Agreement No. 7—KCS Power Marketing, Inc.
Service Agreement No. 8—Sonat Power Marketing Inc.
Service Agreement No. 9—Aquila Power Corporation
Service Agreement No. 10—Maine Public Service Company
Service Agreement No. 11—LG&E Energy Marketing Inc.
Service Agreement No. 12—Rainbow Energy Marketing Corporation
Service Agreement No. 13—KN Services, Inc.
Service Agreement No. 14—Village of Greenport (NY)
Service Agreement No. 15—Village of Rockville Centre (NY)
Service Agreement No. 16—Vitol Gas & Electric, LLC
Service Agreement No. 17—TransCanada Energy Ltd.
Service Agreement No. 18—NorAm Energy Services, Inc.
Service Agreement No. 19—Northeast Utilities Services Company
Service Agreement No. 20—Cinergy Operating Companies
Service Agreement No. 21—Coral Power, LLC
Service Agreement No. 22—NorAm Energy Services, Inc.
Service Agreement No. 23—TransCanada Power Corporation
Service Agreement No. 24—AIG Trading Corporation
Service Agreement No. 25—PanEnergy Trading and Marketing Services
Service Agreement No. 26—Atlantic City Electric Company
Service Agreement No. 27—Energy Transfer Group, LLC
Service Agreement No. 28—Federal Energy Sales, Inc.
Service Agreement No. 29—Dupont Power Marketing, Inc.
Service Agreement No. 30—Baltimore Gas & Electric Company
Service Agreement No. 31—The Power Company of America
Service Agreement No. 32—Plum Street Energy Marketing, Inc.
Service Agreement No. 33—Commonwealth Electric Company
Service Agreement No. 34—Western Power Services, Inc.
Service Agreement No. 35—Sonat Power Marketing LP
Service Agreement No. 36—Williams Energy Services Company
Service Agreement No. 37—Entergy Power Marketing Corporation
Service Agreement No. 38—Promark Energy, Inc.
Service Agreement No. 39—Orange and Rockland Utilities
Service Agreement No. 40—PacifiCorp Power Marketing
Service Agreement No. 41—Central Maine Power Company
Service Agreement No. 42—Tractebel Energy Marketing, Inc.
Service Agreement No. 43—Village of Freeport (NY)
Service Agreement No. 44—Niagara Mohawk Power Corporation
Service Agreement No. 45—Constellation Power Source, Inc.
Service Agreement No. 46—New Energy Ventures, LLC
Service Agreement No. 47—USGen Power Services, LP
Service Agreement No. 48—North American Energy Conservation
Service Agreement No. 49—Green Mountain Power Corporation
Service Agreement No. 50—Virginia Electric and Power Company
Service Agreement No. 51—NGE Generation, Inc.
Service Agreement No. 52—SCANA Energy Marketing, Inc.
Service Agreement No. 53—FirstEnergy Trading & Power Marketing, Inc.
Service Agreement No. 54—Cinergy Capital & Trading, Inc.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Delmarva Power & Light Co.

[Docket No. ER98–3973–000]

Take notice that on July 29, 1998, Delmarva Power & Light Company (Delmarva), tendered for filing a summary of short-term transactions made during the second quarter of calendar year 1998 under Delmarva's Market Rate Sales Tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96-2571–000.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Atlantic City Electric Co.

[Docket No. ER98–3974–000]

Take notice that on July 29, 1998, Atlantic City Electric Company (Atlantic), tendered for filing a summary of short-term transactions made during the second quarter of calendar year 1998 under Atlantic's Marked-Based Rate Power Sales Tariff, FERC Electric Tariff, First Revised Volume No. 1, filed by Atlantic in Docket No. ER96–1361–000.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–21572 Filed 8–11–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF98–5031–000, et al.]

Western Area Power Administration, et al. Electric Rate and Corporate Regulation Filings

August 5, 1998.

Take notice that the following filings have been made with the Commission:

1. Western Area Power Administration

[Docket No. EF98–5031–000]

Take notice that on August 3, 1998, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA–79, did confirm and approve on an interim basis, to be effective on August 1, 1998, the Western Area Power Administration's formula rates under Rate Schedules UP-NT1, UPG-FPT1, UP-NFPT1 for firm and non-firm transmission over the integrated System of the Pick-Sloan Missouri Basin Program-Eastern Division (P-SMBP-ED) and UGP-AS1, UGP-AS2, UGP-AS3, UGP-AS4, UGP-AS5, and UGP-AS6 for ancillary services for the P-SMBP-ED.

The formula rates in the Rate Schedules UGP-NT1, UGP-FPT1, UGP-AS1, UGP-AS2, UGP-AS3, UGP-AS4, UGP-AS5, and UGP-AS6 will be in effect pending the Federal Energy Regulatory Commission's (FERC) approval or of substitute formula rates on a final basis, ending July 31, 2003.

Comment date: August 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Sunlaw Cogeneration Partners I

[Docket No. EG98–87–000]

On August 3, 1998, Sunlaw Cogeneration Partners I (Sunlaw) filed with the Federal Energy Regulatory Commission (Commission) a supplement to its application for determination of exempt wholesale generator status which was filed on June 12, 1998, pursuant to Part 365 of the Commission's regulations.

Sunlaw states that it is a limited partnership organized and existing under the laws of the State of California. Sunlaw indicates that it is engaged directly and exclusively in the business of owning and operating all or part of two cogeneration facilities located in the City of Vernon, California and selling electric energy at wholesale.

Comment date: August 24, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Safe Harbor Water Power Corporation

[Docket No. EG98–107–000]

On July 31, 1998, Safe Harbor Water Power Corporation (Applicant), with its principal office at One Powerhouse Road, Conestoga, Pennsylvania 17516, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and Part 365 of the Commission's regulations.

Applicant states that it is and will be engaged in owning and operating the hydroelectric facility located in Safe Harbor, Pennsylvania (the Eligible Facility), with aggregate generating capacity of approximately 380,390 kW and selling electric energy exclusively at wholesale.

Comment date: August 24, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Kawaihae Cogeneration Partners

[Docket No. EL98–67–000]

Take notice that on July 31, 1998, Kawaihae Cogeneration Partners (KCP) tendered for filing a Petition for Enforcement under section 210(h) of the Public Utility Regulatory Policies Act (PURPA), or in the alternative, for Declaratory Order. KCP states that Hawaii Public Utilities Commission (HPUC) and Hawaiian Electric Company, Inc. (HECO) have taken actions that violate PURPA thereby allowing HECO's wholly owned subsidiary, Hawaii Electric Light Company, to begin construction of its own facility and prevent KCP from building its qualifying facility. KCP requests that the Commission initiate enforcement proceedings or, in the alternative, issue an order declaring that HPUC's actions violate the Commission's rules under PURPA and are therefore preempted under the Federal Power Act.

Comment date: August 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Duquesne Light Company Ohio Edison Co., et al.

[Docket No. EL98–68–000]

Take notice that on July 31, 1998, pursuant to Sections 203(b), 205, and 206 of the Federal Power Act and Rule 207 of the Commission's regulations, Duquesne Light Company submitted for filing a Petition for Declaratory Order, Amendment of Contracts, and/or Supplemental Remedial Order. Duquesne request a declaration that FirstEnergy Corp. may not unreasonably withhold consent to the assignment of Duquesne's interest in the agreements governing the operation of generating units that Duquesne jointly owns with FirstEnergy Corp.

Copies of the filing were served on FirstEnergy Corp. and the participants in EC97–5–000.

Comment date: August 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Western Systems Power Pool, Howell Power Systems, Inc., MidCon Management Corp., J.L. Walker & Associates, Ocean Energy Services, Inc., United American Energy Corp., XERXE Group, Inc.

[Docket Nos. ER91–195–032; ER94–178–015; ER94–1329–016; ER95–1261–012; ER96–588–007; ER96–3092–008; and ER98–1823–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On June 29, 1998, Western Systems Power Pool filed certain information as required by the Commission's June 2, 1992, order in Docket No. ER91–195–000.

On June 20, 1998, Howell Power Systems, Inc. filed certain information as required by the Commission's January 14, 1994, order in Docket No. ER94–178–000.

On July 20, 1998, MidCon Management Corp. filed certain information as required by the Commission's August 11, 1994, order in Docket No. ER94–1329–000.

On July 29, 1998, J.L. Walker & Associates filed certain information as required by the Commission's August 7, 1995, order in Docket No. ER95–1261–000.

On July 9, 1998, Ocean Energy Services, Inc. filed certain information as required by the Commission's January 19, 1996, order in Docket No. ER96–588–000.

On July 10, 1998, United American Energy, Corp. filed certain information as required by the Commission's January 3, 1997, order in Docket No. ER96–3092–000.

On July 6, 1998, The XEREX Group, Inc. filed certain information as required by the Commission's March 19, 1998, order in Docket No. ER98–1823–000.

7. Phibro Inc., Premier Enterprises, LLC, SuperSystems, Inc., Sunoco Power Marketing, LLC, Griffin Energy Marketing, LLC, Bruin Energy, Inc., Energy Sales Network, Inc.

[Docket Nos. ER95–430–015; ER95–1123–009; ER96–906–007; ER97–870–006; ER97–4168–003; ER98–538–003; and ER98–753–003 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On June 25, 1998, Phibro Inc. filed certain information as required by the Commission's June 9, 1995, order in Docket No. ER95–430–000.

On June 24, 1998, Premier Enterprises, LLC filed certain information as required by the Commission's August 7,1995, order in Docket No. ER95–1123–000.

On June 22, 1998, SuperSystems, Inc. filed certain information as required by the Commission's March 27, 1996, order in Docket No. ER96–906–000.

On July 8, 1998, Sunoco Power Marketing, LLC filed certain information as required by the Commission's April 11, 1997, order in Docket No. ER97–870–000.

On July 9, 1998, Griffin Energy Marketing, LLC filed certain information as required by the Commission's June 29, 1997, order in Docket No. ER97–4168–000.

On July 8, 1998, Bruin Energy, Inc. filed certain information as required by

the Commission's July 4, 1995, order in Docket No. ER98–538–000.

On July 8, 1998, Energy Sales Network, Inc. filed certain information as required by the Commission's July 4, 1995, order in Docket No. ER98–753–000.

8. QST Energy Trading Inc., Anker Power Services, Inc.

[Docket Nos. ER96–553–011; ER97–3788–003]

Take notice that the following informational filings have been made with the Commission and are on file and available for Public inspection and copying in the Commission's Public Reference Room:

On July 24, 1998, QST Energy Trading Inc. filed certain information as required by the Commission's March 16, 1996, order in Docket No. ER96–553–000.

On July 24, 1998, Anker Power Services Inc. filed certain information as required by the Commission's September 19, 1997, order in Docket No. ER97–3788–000.

9. California Power Exchange Corporation

[Docket No. ER98–2095–000]

Take notice that on July 30, 1998, the California Power Exchange Corporation (PX) tendered for filing an index of customers for acceptance by the Commission with a request for waiver of any requirements that executed Participation Agreements contain an Options Addendum or, until the date of the submittal, July 30, 1998, a software licensing agreement requirement.

The PX states that this filing has been served on all parties in the above-captioned docket.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Rochester Gas and Electric Corp.

[Docket No. ER98–2510–000]

Take notice that on July 30, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for filing an executed transmission service agreement between RG&E and Energetix, Inc. (Energetix). The service agreement is an executed version of a service agreement filed on June 17, 1998 in unexecuted form.

A copy of the service agreement was served on the New York Public Service Commission and on all parties listed on the official service list in Docket No. ER98–2510–000.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Thomas Hodgson & Sons, Inc.

[Docket No. ER98–2601–000]

Take notice that on July 28, 1998, Thomas Hodgson & Sons, Inc. tendered for filing a Notice of Withdrawal in the above-referenced docket.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. PJM Interconnection, L.L.C.

[Docket No. ER98–3110–000]

Take notice that on July 30, 1998, PJM Interconnection, L.L.C. (PJM) tendered for filing, pursuant to order issued June 30, 1998, a compliance filing to amend its Form of Service Agreement for Firm Point-to-Point Transmission Service (PJM Open Access Transmission Tariff, Attachment A).

The amendment provides for a confirmation period during which an applicant for Short-Term Firm Point-to-Point Transmission Service must confirm, following PJM's approval of its request for service, that it will commence service in accordance with its request.

PJM requests an effective date of August 1, 1998 for the amendment.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. AIE Energy, Inc.

[Docket No. ER98–3164–000]

Take notice that on July 24, 1998, AIE Energy, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Rochester Gas and Electric Corp.

[Docket No. ER98–3382–000]

Take notice that on July 31, 1998, Rochester Gas and Electric Corporation tendered for filing a revised Form of Service Agreement, originally submitted on June 16, 1998.

A copy of the Form of Service Agreement was served on the New York Public Service Commission.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Central Maine Power Co.

[Docket No. ER98–3561–000]

Take notice that on June 29, 1998, Central Maine Power Company tendered for filing a quarterly report for the period January 1, 1998 to March 31, 1998.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Co.

[Docket No. ER98–3712–000]

Take notice that on July 31, 1998, Virginia Electric and Power Company (Virginia Power) tendered for filing a supplemental filing that amends and explains the provision of generation imbalance service to North Carolina Electric Membership Corporation.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Unitil Power Corp.

[Docket No. ER98–3742–000]

Take notice that on July 15, 1998, Unitil Power Corp. Company tendered for filing its quarterly report ending June 30, 1998.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Fitchburg Gas & Electric Co.

[Docket No. 3748–000]

Take notice that on July 15, 1998, Fitchburg Gas & Electric Company tendered for filing its quarterly report ending June 30, 1998.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Virginia Electric and Power Co.

[Docket No. ER98–3775–000]

Take notice that on July 30, 1998, Virginia Electric and Power Company (Virginia Power) tendered for filing an executed version of the Service Agreement for Non-Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., which it had filed in unexecuted form on July 17, 1998.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Virginia Electric and Power Co.

[Docket No. ER98–3776–000]

Take notice that on July 30, 1998, Virginia Electric and Power Company (Virginia Power) tendered for filing an executed version of the Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., which it had filed in unexecuted form on July 17, 1998.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Cleveland Electric Co.

[Docket No. ER98–3930–000]

Take notice that on July 27, 1998, Cleveland Electric Company tendered for filing a quarterly report for the period April 1, 1998 to June 30, 1998.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Western Resources, Inc.

[Docket No. ER98–3975–000]

Take notice that on July 30, 1998, Western Resources, Inc. (Western Resources), tendered for filing an agreement between Western Resources and Minnesota Power. Western Resources states that the purpose of the agreement is to permit the customers to take service under Western Resources' market-based power sales tariff on file with the Commission. The agreement is proposed to become effective July 6, 1998.

Copies of the filing were served upon Minnesota Power and the Kansas Corporation Commission.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. British Columbia Power Exchange

[Docket No. ER98–3984–000]

Take notice that on July 30, 1998, British Columbia Power Exchange Corporation (Powerex) tendered for filing a conditional notice of termination concerning wholesale power sales arrangements between Powerex and The Power Company of America, L.P. If the Commission determines that a notice of termination is required to be filed with respect to these arrangements, then Powerex requests that the termination of these arrangements be given effect as of June 30, 1998.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Northern States Power Company, (Minnesota Company), Northern States Power Company (Wisconsin Company)

[Docket No. ER98–3985–000]

Take notice that on July 30, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP) tendered for filing an Electric Service Agreement between NSP and Entergy Services, Inc. (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4. NSP requests that this Electric Service Agreement be made effective on July 1, 1998.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Entergy Power Marketing Corp.

[Docket No. ER98–3986–000]

Take notice that on July 30, 1998, Entergy Power Marketing Corp. (EPMC) tendered for filing a notice of termination, emergency request for waiver of notice, and alternative request for relief concerning the Electric Power Services Agreement dated January 6, 1998, between EPMC and The Power Company of America, L.P., for the provision of electric service to The Power Company of America, L.P.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. New England Power Company

[Docket No. ER98–3989–000]

Take notice that on July 30, 1998, New England Power Company (NEP) tendered for filing Service Agreements between NEP and the following companies under its tariff for capacity and capacity related products, NEP Electric Tariff No. 10, which was accepted for filing by the Commission on March 31, 1998, in Docket No. ER98–1636–000 and designated FERC Electric Tariff Original Volume No. 11: Great Bay Power Corporation, dated June 8, 1998; City of Holyoke Gas and Electric Department, dated June 15, 1998; Middleborough Gas and Electric Department, dated June 29, 1998; and Burlington Electric Department, dated June 15, 1998.

Copies of this filing were served on the parties to the Service Agreement, New Hampshire Public Utilities Commission, Vermont Department of Public Service, and the Massachusetts Department of Telecommunications and Energy.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Rochester Gas and Electric Corp.

[Docket No. ER98–3990–000]

Take notice that on July 30, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for filing a Service Agreement between RG&E and North American Energy (Transmission Customer) for service under RG&E's open access transmission tariff.

RG&E requests waiver of the notice requirements for an effective date of July 1, 1998.

Copies of the filing were served on the Transmission Customer and the New York Public Service Commission.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. The Dayton Power and Light Co.

[Docket No. ER98–3991–000]

Take notice that on July 30, 1998, The Dayton Power and Light Company (Dayton) tendered for filing service agreements establishing Florida Power and Light Company as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to the date of this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of the filing were served on Florida Power and Light Company and the Public Utilities Commission of Ohio.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. LG&E Energy Marketing Inc.

[Docket No. ER98–3992–000]

Take notice that on July 30, 1998, LG&E Energy Marketing Inc., tendered for filing a notice of termination, emergency request for waiver of notice, and an alternative request for relief pertaining to certain agreements for the purchase and sale at wholesale of electric power with the City of Springfield, Illinois City Water, Light and Power.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Boston Edison Co.

[Docket No. ER98–3993–000]

Take notice that on July 30, 1998, Boston Edison Company (Boston Edison) tendered for filing a Standstill Agreement between Boston Edison and Montaup Electric Company (Montaup). The Standstill Agreement extends through November 27, 1998, the time in which Montaup may institute a legal challenge to the 1996 true-up bill under Boston Edison's FERC Rate Schedule No. 69, governing sales to Montaup from the Pilgrim Nuclear Station.

Boston Edison requests waiver of the Commission's notice requirements to all the Standstill Agreement to become effective August 1, 1998.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Public Service Company of New Mexico

[Docket No. ER98–3995–000]

Take notice that on July 30, 1998, Public Service Company of New Mexico (PNM) submitted for filing executed service agreements, for electric power and energy sales at negotiated rates under the terms of PNM's Power and

Energy Sales Tariff, with Energy Transfer Group, L.L.C., (dated July 9, 1998), Illinova Energy Partners (dated July 21, 1998), and Williams Energy Services Company (dated July 21, 1998).

Copies of the filing have been served on each of the customers and the New Mexico Public Utility Commission.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Northern States Power Company (Minnesota Company), Northern States Power Company (Wisconsin Company)

[Docket No. ER98–3997–000]

Take notice that on July 30, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP) tendered for filing a Short-Term Market-Based Electric Service Agreement between NSP and Electric System of the Board of Municipal Utilities, Sikeston, Missouri (Customer). NSP requests that this Short-Term Market-Based Electric Service Agreement be made effective on July 2, 1998.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Northern States Power Company (Minnesota Company), Northern States Power Company (Wisconsin Company)

[Docket No. ER98–3998–000]

Take notice that on July 30, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP) tendered for filing a Short-Term Market-Based Electric Service Agreement between NSP and Entergy Services, Inc. (Customer). NSP requests that this Short-Term Market-Based Electric Service Agreement be made effective on July 1, 1998.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. New England Power Co.

[Docket No. ER98–3999–000]

Take notice that on July 30, 1998, New England Power Company (NEP) tendered for filing a Service Agreement between NEP and the Great Bay Power Corporation, dated June 8, 1998, under NEP's tariff for System Energy Sales and Exchanges, FERC Electric Tariff Original Volume No. 5.

Copies of this filing were served on the parties to the Service Agreement, New Hampshire Public Utilities Commission, and Massachusetts Department of Telecommunications and Energy.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. New York State Electric & Gas Corp.

[Docket No.ER98–4000–000]

Take notice that on July 30, 1998, New York State Electric & Gas Corporation (NYSEG), tendered for filing an unexecuted Network Service and Network Operating Agreements between NYSEG and nine (9) New York State Municipal Electric Utilities (Customers). These Service Agreements specify that the Customers have agreed to the rates, terms and conditions of NYSEG's currently effective open access transmission tariff.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of July 1, 1998 for the Service Agreements.

NYSEG has served copies of the filing on the New York State Public Service Commission and on the Customers.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. Rochester Gas and Electric Corp.

[Docket No. ER98–4002–000]

Take notice that on July 30, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for filing an executed transmission service agreement between RG&E and Select Energy, Inc.

A copy of the service agreement has been served on the New York Public Service Commission and on the Customer.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. Rochester Gas and Electric Corp.

[Docket No. ER98–4003–000]

Take notice that on July 30, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for an executed transmission service agreement between RG&E and Select Energy, Inc. (Customer).

A copy of the service agreement has been served on the New York Public Service Commission and on the Customer.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. Rochester Gas and Electric Corp.

[Docket No. ER98–4006–000]

Take notice that on July 30, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for an executed transmission service agreement between RG&E and Ensearch Energy Service (New York) (Customer).

A copy of the service agreement has been served on the New York Public Service Commission and on the Customer.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. Rochester Gas and Electric Corp.

[Docket No. ER98–4007–000]

Take notice that on July 30, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for filing an executed transmission service agreement between RG&E and North American Energy Inc. (Customer).

A copy of the service agreement has been served on the New York Public Service Commission and on the Customer.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. Rochester Gas and Electric Corp.

[Docket No. ER98–4008–000]

Take notice that on July 30, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for filing an executed transmission service agreement between RG&E and Northeast Energy Services, Inc. (Customer).

A copy of the service agreement has been served on the New York Public Service Commission and on the Customer.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. Rochester Gas and Electric Corp.

[Docket No. ER98–4009–000]

Take notice that on July 30, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for filing an executed transmission service agreement between RG&E and Northeast Energy Services, Inc. (Customer).

A copy of the service agreement has been served on the New York Public Service Commission and on the Customer.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

42. Rochester Gas and Electric Corp.

[Docket No. ER98–4010–000]

Take notice that on July 30, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for filing an executed transmission service agreement between RG&E and Columbia Energy Power Marketing (Customer).

A copy of the service agreement has been served on the New York Public Service Commission and on the Customer.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

43. Rochester Gas and Electric Corp.

[Docket No. ER98–4011–000]

Take notice that on July 30, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for filing an executed transmission service agreement between RG&E and North American Energy Inc. (Customer).

A copy of the service agreement has been served on the New York Public Service Commission and on the Customer.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

44. California Power Exchange Corp.

[Docket No. ER98–4014–000]

Take notice that on July 30, 1998, the California Power Exchange Corporation (PX), pursuant to the Commission order issued June 25, 1998, in Docket No. ER98–2773–000, *et al.*, tendered for filing an Index of Meter Service Customers for acceptance by the Commission.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

45. Washington Water Power Co.

[Docket No. ER98–4015–000]

Take notice that on July 30, 1998, the Washington Water Power Company (WWP), an electric utility and a marketer of electric power, filed a notice of cancellation pursuant to 18 CFR 35.15, of power sale agreements between WWP and The Power Company of America, L.P. (PCA), entered into between January 14 and January 27, 1998 under the Western Systems Power Pool Agreement.

WWP has also filed a motion for waiver of the 60-day advance filing requirement under 18 CFR 35.15, to permit WWP to terminate service to PCA as of August 1, 1998.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

46. Rochester Gas and Electric Corp.

[Docket No. ER98–4021–000]

Take notice that on July 31, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for filing an executed transmission service agreement between RG&E and Columbia Energy Power Marketing (Customer).

A copy of the service agreement has been served on the New York Public Service Commission and on the Customer.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

47. FirstEnergy System

[Docket No. ER98–4022–000]

Take notice that on July 31, 1998, FirstEnergy System tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for Western Resources, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing in Docket No. ER97–412–000. The proposed effective date under this Service Agreement is July 20, 1998.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

48. FirstEnergy System

[Docket No. ER98–4023–000]

Take notice that on July 31, 1998, FirstEnergy System tendered for filing a Service Agreement to provide Firm Point-to-Point Transmission Service for Western Resources, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing in Docket No. ER97–412–000. The proposed effective date under this Service Agreement is July 20, 1998.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

49. Rochester Gas and Electric Corp.

[Docket No. ER98–4024–000]

Take notice that on July 31, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for filing an executed transmission service agreement between RG&E and Energetix, Inc. (Customer).

A copy of the service agreement has been served on the New York Public Service Commission and on the Customer.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

50. Rochester Gas and Electric Corp.

[Docket No. ER98–4025–000]

Take notice that on July 31, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for filing a Service Agreement between RG&E and Energetix, Inc. (Transmission Customer) for service under RG&E's open access transmission tariff.

RG&E requests waiver of the Commission's notice requirements and an effective date of July 1, 1998.

A copy of the filing was served on the Transmission Customer and the New York Public Service Commission.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

51. Rochester Gas and Electric Corp.

[Docket No. ER98–4026–000]

Take notice that on July 31, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for filing a Service Agreement between RG&E and Northeast Energy Services, Inc. (Transmission Customer) for service under RG&E's open access transmission tariff.

RG&E requests waiver of the Commission's notice requirements and an effective date of July 1, 1998.

A copy of the filing was served on the Transmission Customer and the New York Public Service Commission.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

52. Rochester Gas and Electric Corp.

[Docket No. ER98–4027–000]

Take notice that on July 31, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for filing a Service Agreement between RG&E and Northeast Energy Services, Inc. (Transmission Customer) for service under RG&E's open access transmission tariff.

RG&E requests waiver of the Commission's notice requirements and an effective date of July 1, 1998.

A copy of the filing was served on the Transmission Customer and the New York Public Service Commission.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

53. Rochester Gas and Electric Corp.

[Docket No. ER98–4028–000]

Take notice that on July 31, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for filing a Service Agreement between RG&E and Columbia Energy Power Marketing Corporation (Transmission Customer) for service under RG&E's open access transmission tariff.

RG&E requests waiver of the Commission's notice requirements and an effective date of July 1, 1998.

A copy of the filing was served on the Transmission Customer and the New York Public Service Commission.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

54. Rochester Gas and Electric Corp.

[Docket No. ER98–4029–000]

Take notice that on July 31, 1998, Rochester Gas and Electric Corporation

(RG&E) tendered for filing a Service Agreement between RG&E and Columbia Energy Power Marketing Corporation (Transmission Customer) for service under RG&S's open access transmission tariff.

RG&S requests waiver of the Commission's notice requirements and an effective date of July 1, 1998.

A copy of the filing was served on the Transmission Customer and the New York Public Service Commission.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

55. Rochester Gas and Electric Corp.

[Docket No. ER98–4030–000]

Take notice that on July 31, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for filing a Service Agreement between RG&E and North American Energy (Transmission Customer) for service under RG&E's open access transmission tariff.

RG&E requests waiver of the Commission's notice requirements and an effective date of July 1, 1998.

A copy of the filing was served on the Transmission Customer and the New York Public Service Commission.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

56. Rochester Gas and Electric Corporation

[Docket No. ER98–4031–000]

Take notice that on July 31, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for filing a Service Agreement between RG&E and Enserch Energy Services (Transmission Customer) for service under RG&E's open access transmission tariff.

RG&E requests waiver of the Commission's notice requirements and an effective date of July 1, 1998.

A copy of the filing was served on the Transmission Customer and the New York Public Service Commission.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

57. Virginia Electric and Power Co.

[Docket No. ER98–4033–000]

Take notice that on July 31, 1998, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Engage Energy US L.P. under Virginia Power's Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to Engage Energy US L.P. under the rates, terms and conditions of the Open Access Transmission Tariff. Virginia Power requests an effective date of July 1, 1998 for the Service Agreement.

Copies of the filing were served on Engage Energy US L.P., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

58. American Electric Power Service Corp.

[Docket No. ER98–4034–000]

Take notice that on July 31, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing service agreements under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997, and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5. AEPSC requests waiver of notice to permit the service agreements to be made effective for service on July 1, 1998.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

59. PJM Interconnection, L.L.C.

[Docket No. ER98–4035–000]

Take notice that on July 31, 1998, the PJM Interconnection, L.L.C. (PJM), on behalf of the Members of the LLC, tendered for filing membership applications of Enserch Energy Services, Inc., Green Mountain Energy Resources L.L.C., and Rochester Gas & Electric Corporation. PJM requests an effective date on the day after the receipt of the filing.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

60. Green Mountain Power Corp.

[Docket No. ER98–4036–000]

Take notice that on July 31, 1998, Green Mountain Power Corporation (Green Mountain) tendered for filing a service agreement with Enserch Energy Services, Inc., pursuant to Green Mountain's FERC Electric Tariff No. 2. Green Mountain requests an effective date of July 1, 1998 for the service agreement.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

61. Ohio Valley Electric Corp. Indiana-Kentucky Electric Corp.

[Docket No. ER98–4037–000]

Take notice that on July 31, 1998, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC) tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated July 7, 1998 (Service Agreement) between Aquila Power Corporation (Aquila Power) and OVEC. OVEC proposes an effective date of July 7, 1998, and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to Aquila Power.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

62. PECO Energy Co.

[Docket No. ER98–4038–000]

Take notice that on July 31, 1998, PECO Energy Company (PECO), filed a Service Agreement dated July 22, 1998 with Borough of Ephrata (EPHRATA) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds EPHRATA as a customer under the Tariff.

PECO requests an effective date of July 22, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to EPHRATA and to the Pennsylvania Public Utility Commission.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

63. Spark Energy Trading, L.L.C.

[Docket No. ER98–4039–000]

Take notice that on July 31, 1998, Spark Energy Trading, L.L.C.(Spark), tendered for filing with the Commission a Petition for Acceptance of Initial Rate Schedule No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Spark intends to engage in wholesale electric power and energy purchases and sales as a marketer. Spark is not in the business of generating or transmitting electric power. Spark is an independent, Texas-based limited liability company.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

64. DTE Energy Trading, Inc.

[Docket No. ER98–4044–000]

Take notice that on July 31, 1998, DTE Energy Trading, Inc. tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that DTE Energy Trading, Inc. had completed all the steps for pool membership. DTE Energy Trading Inc. requests that the Commission amend the WSPP Agreement to include it as a member.

DTE Energy Trading, Inc. requests an effective date of August 1, 1998 for the proposed amendment. Accordingly, DTE Energy Trading, Inc. requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee and WSPP's General Counsel.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

65. Niagara Mohawk Power Corp.

[Docket No. ER98–4048–000]

Take notice that on July 31, 1998, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission, an unexecuted Network Integration Transmission Service Agreement and an unexecuted Network Operating Agreement between NMPC and Village of Theresa. The Network Integration Transmission Service Agreement and Network Operating Agreement specifies that Village of Theresa will sign on to and will agree to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Village of Theresa to enter into scheduled transactions under which NMPC will provide network integration transmission service for Village of Theresa.

NMPC requests an effective date of July 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Village of Theresa.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

66. Niagara Mohawk Power Corporation

[Docket No. ER98–4049–000]

Take notice that on July 31, 1998, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an unexecuted Network Integration Transmission Service Agreement and an unexecuted Network Operating Agreement between NMPC and Village of Skaneateles. The Network Integration Transmission Service Agreement and Network Operating Agreement specifies that Village of Skaneateles will sign on to and will agree to the terms and conditions of NMPC=s Open Access Transmission Tariff as filed in Docket No. OA96–194-000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Village of Skaneateles to enter into scheduled transactions under which NMPC will provide network integration transmission service for Village of Skaneateles.

NMPC requests an effective date of July 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Village of Skaneateles.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

67. Niagara Mohawk Power Corp.

[Docket No. ER98–4050–000]

Take notice that on July 31, 1998, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an unexecuted Network between NMPC and Village of Richmondville. The Network Integration Transmission Service Agreement and Network Operating Agreement specifies that Village of Richmondville will sign on to and will agree to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Village of Richmondville to enter into scheduled transactions under which NMPC will provide network integration transmission service for Village of Richmondville.

NMPC requests an effective date of July 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Village of Richmondville.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

68. Niagara Mohawk Power Corp.

[Docket No. ER98–4051–000]

Take notice that on July 31, 1998, Nigara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an unexecuted Network Integration Transmission Service Agreement and an unexecuted Network Operating Agreement between NMPC and Village of Holley. The Network Integration Transmission Service Agreement and Network Operating Agreement specifies that Village of Holley will sign on to and will agree to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Village of Holley to enter into scheduled transactions under which NMPC will provide network integration transmission service for Village of Holley.

NMPC requests an effective date of July 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Village of Holley.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

69. Niagara Mohawk Power Corp.

[Docket No. ER98–4052–000]

Take notice that on July 31, 1998, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an unexecuted Network Integration Transmission Service Agreement and an unexecuted Network Operating Agreement between NMPC and Green Island Power Authority. The Network Integration Transmission Service Agreement and Network Operating Agreement specifies that Green Island Power Authority will sign on to and will agree to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Green Island Authority to enter into scheduled transactions under which NMPC will provide network integration transmission service for Green Island Power Authority.

NMPC requests an effective date of July 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Green Island Power Authority. Niagara Mohawk Power Corporation Docket No. ER98–4051–000.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

70. Niagara Mohawk Power Corp.

[Docket No. ER98–4053–000]

Take notice that on July 31, 1998, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy regulatory Commission an unexecuted Network Integration transmission Service Agreement and an unexecuted network Operating Agreement between NMPC and Village of Mohawk. The Network Integration Transmission Service Agreement and Network Operating Agreement specifies that Village of Mohawk will sign on to and will agree to the terms and conditions of NMPC's Open Access Transmission tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Village of Mohawk to enter into scheduled transactions under which NMPC will provide network integration transmission service for Village of Mohawk.

NMPC requests an effective date of July 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Village of Mohawk.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

71. Alliant Services, Inc.

[Docket No. ER98–4054–000]

Take notice that on July 31, 1998, Alliant Services, Inc. (Alliant), on its own behalf and on behalf of IES Utilities Inc., Interstate Power Company, and Wisconsin Power & Light Company (the IEC Operating Companies), submitted a revised System Coordination and Operating Agreement in the above-captioned docket.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

72. CinCap V, LLC

[Docket No. ER98–4055–000]

On July 31, 1998, Cin Cap V,LLC (CinCap V) submitted for approval CinCap V's Rate Schedule No. 1, a Code of Conduct; a request for certain blanket approvals, including the authority to sell electricity at market-based rates; and a request for waiver of certain Commission regulations. CinCap V, a Delaware limited liability company, is a wholly-owned subsidiary of Cinergy Capital and Trading Inc.

CinCap requested a September 29, 1998 effective date for Rate Schedule No. 1.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

73. Texas Utilities Electric Co.

[Docket No. ER98–4060–000]

Take notice that, on July 31, 1998, Texas Utilities Electric Company (TU Electric), tendered for filing an executed transmission service agreement (TSA), with Merchant Energy Group of the Americas, Inc. for certain Unplanned Service transactions under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA that will permit it to become effective on or before the service commencement date under the TSA. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on Merchant Energy Group of the Americas, Inc. as well as the Public Utility Commission of Texas.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

74. The California Power Exchange Corp.

[Docket No. ER98–4062–000]

On July 31, 1998, the California Power Exchange Corporation (PX), tendered for filing a PX Participation Agreement between the PX and the California Department of Water Resources in compliance with the Commission's May 19, 1998 order. California Power Exch. Corp., 83 FERC 61,186 (1998).

The PX states that this filing has been served upon all parties on the official service list in the above-captioned docket.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

75. American Electric Power Service Corp.

[Docket No. ER98–4063–000]

Take notice that on July 30, 1998, the American Electric Power Service Corporation (AEPSC) tendered for filing executed service agreements under the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of the notice requirements to permit the Service Agreements to be made effective for service billed on and after July 1, 1998.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

76. Portland General Electric Co.

[Docket No. ES98–41–000]

Take notice that on July 28, 1998, Portland General Electric Company submitted an application, under Section 204 of the Federal Power Act, for authorization to issue short-term debt, from time to time, in an aggregate principal amount not to exceed $250 million over a two-year period.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

77. Gary D. Cotton

[Docket No. ID–3122–000]

Take notice that on January 26, 1998, Gary D. Cotton (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Governor—California Independent System Operator Corporation

Senior Vice President-Energy Supply—San Diego Gas & Electric Company

Governor—California Power Exchange Corporation

Comment date: August 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

78. Salt River Project Agricultural Improvement and Power District

[Docket No. NJ98–3–001]

Take notice that on July 13, 1998, Salt River Project Agricultural Improvement and Power District, tendered for filing a revised voluntary open access transmission tariff to comply with the Commission's June 11, 1998 order in the captioned proceeding. SRP also subsequently tendered for filing, on July 28, 1998, corrections to its revised voluntary open access transmission tariff.

Comment date: August 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

79. Inland Power & Light Co.

[Docket No. OA98–16–000]

Take notice that on July 28, 1998, Inland Power & Light Company (Inland) filed a request for waiver of the requirements of Order No. 888 and Order No. 889 pursuant to 18 CFR 35.28(d) of the Federal Energy Regulatory Commission's (Commission) Regulations. Inland's filing is available for public inspection at its offices in Spokane, Washington.

Comment date: August 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–21571 Filed 8–11–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File Application for New License

August 7, 1998.

a. Type of filing: Notice of Intent to File Application for New License.

b. Project No.: P–1273.

c. Date filed: May 26, 1998.

d. Submitted By: Parowan City Corporation, current licensee.

e. Name of Project: Center Creek.

f. Location: On Center Creek in Iron County, Utah.

g. Filed Pursuant to: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. Expiration date of original license: December 20, 1004.

i. The project consists of: (1) a 20-foot-high, 54-foot-long concrete gravity dam; (2) a 25-foot-high, 980-foot-long earthfill embankment impounding; (3) a storage pond with storage capacity of 21 acre-feet; (4) a 26-inch-diameter pipe from the concrete dam to the pond; (5) a 19,300-foot-long steel penstock; (6) a powerhouse with an installed capacity of 600 kilowatts; (7) a 20,992-foot-long, 12.47-kilovolt transmission line; and (8) other appurtenances.

j. Pursuant to 18 CFR 16.7, information on the project is available at: The City of Parowan, 5 South Main, Parowan, UT 84761, Phone: (435) 477–3331.

k. FERC contact: Hector M. Pérez (202) 219–2843.

l. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 2002.

David P. Boergers,

Secretary.

[FR Doc. 98–21622 Filed 8–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File Application for New License

August 7, 1998.

a. Type of filing: Notice of Intent to File Application for New License.

b. Project No.: P–2782.

c. Date filed: May 26, 1998.

d. Submitted By: Parowan City Corporation, current license.

e. Name of Project: Red Creek.

f. Location: On Red Creek and South Fork in Iron County, Utah.

g. Filed Pursuant to: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's requirements.

h. Expiration date of original license: April 30, 2003.

i. The project consists of: (1) the 8-foot-high, 29-foot-long South Fork Diversion Dam and reservoir; (2) the 8-foot-high, 48-foot-long Red Creek Diversion Dam and reservoir; (3) the 10-inch-diameter, 4,263-foot-long South Fork steel pipeline; the 18-inch-diameter, 16,098-foot-long steel Red Creek pipeline; (4) a pumphouse with two electric pumps delivering water from the South Fork pipeline into the Red Creek pipeline; (5) a powerhouse with an installed capacity of 500 kilowatts; and (6) other appurtenances.

j. Pursuant to 18 CRF 16.7, information on the project is available at: The City of Parowan, 5 South Main, Parowan, UT 84761, Phone: (435) 477–3331.

k. FERC contact: Hector M. Pérez (202) 219–2843.

l. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 2001.

David P. Boergers,

Secretary.

[FR Doc. 98–21623 Filed 8–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program, Eastern Division—Rate Order No. WAPA–79

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–79 and Rate Schedules UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, UGP–AS6, UGP–FPT1, UGP–NFPT1, and UGP–NT1 placing formula rates into effect on an interim basis for firm and non-firm transmission on the Integrated System (IS) and ancillary services in Western Area Power Administration's (Western) Watertown control area.

The charges for the transmission and ancillary services will be implemented on August 1, 1998. Subsequent annual recalculation will be based on updated financial data and loads. Network Transmission Service charges will be based on the Transmission Customer's load-ratio share of the annual revenue requirement for transmission. Point-to-Point Transmission Service will be based on reserved capacity on the Transmission System. The charges for ancillary services will be based on the cost of resources used to provide these services.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Riehl, Rates Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, (406) 247–7388, or e-mail (riehl@wapa.gov).

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy (Secretary) delegated (1) the authority to develop long-term power and transmission rates on a non-exclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect

on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

Rate Order No. WAPA–79, confirming, approving, and placing the IS Network, Firm Point-to-Point, and Non-Firm Point-to-Point Transmission, and the new ancillary services formula rates into effect on an interim basis, is issued. These transmission and ancillary service formula rates are established pursuant to section 302 of DOE Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation were transferred to, and vested in, the Secretary. Rate Order No. WAPA–79 was prepared pursuant to Delegation Order No. 0204–108 (Delegation Order), existing DOE procedures for public participation in power rate adjustments in 10 CFR part 903, and procedures for approving Power Marketing Administration rates by the FERC in 18 CFR part 300. In addition to seeking final confirmation under the Delegation Order, Western requests the FERC review the proposed transmission rates for the Upper Great Plains Region (UGPR) for consistency with the standards of section 212 (a) of the Federal Power Act 16 U.S.C. 824k (a). In doing so, Western asks the FERC to determine that its rates are comparable to what it charges other customers and conform to the standards under the Delegation Order in a manner similar to the FERC's finding in *United States Department of Energy-Bonneville Power Administration*, 80 FERC ¶ 61,118 (1997).

Western has separately filed for approval of generally applicable terms and conditions under its Open Access Transmission Tariff (Tariff) in Docket No. NJ98–1–000. These rate schedules will be utilized under the Tariff for service in the UGPR of Western, and they are potentially subject to FERC review under the standards of 16 U.S.C. 824k (a). Because Western's transmission rates were established in accordance with 10 CFR part 903, 18 CFR part 300 and the Delegation Order, if the rates submitted by Western are found to violate the statutory standards, they must be remanded to the Administrator for further proceedings.

The new Rate Schedules UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, UGP–AS6, UGP–FPT1, UGP–NFPT1, and UGP–NT1 will be promptly submitted to the FERC for confirmation and approval on a final basis.

Dated: July 31, 1998.

Elizabeth A. Moler,

Deputy Secretary.

Order Confirming, Approving, and Placing the Pick-Sloan Missouri Basin Program, Eastern Division Transmission and Ancillary Service Formula Rates Into Effect on an Interim Basis

August 1, 1998.

These transmission and ancillary service formula rates are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts specifically applicable to the project involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108 (Delegation Order), published November 10, 1993 (58 FR 59716), the Secretary delegated: (1) the authority to develop long-term power and transmission rates on a non-exclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

Existing Department of Energy (DOE) procedures for public participation in power rate adjustments are found in 10 CFR part 903. Procedures for approving Power Marketing Administration rates by the FERC are found in 18 CFR part 300. In addition to seeking final confirmation under the Delegation Order, Western requests the FERC review the proposed transmission rates for the Upper Great Plains Region (UGPR) for consistency with the standards of section 212 (a) of the Federal Power Act (FPA), 16 U.S.C. 824k (a). In doing so, Western asks the FERC to determine that its rates are comparable to what it charges other customers and conform to the standards under the Delegation Order in a manner similar to the FERC's finding in *United States Department of Energy-Bonneville Power Administration*, 80 FERC ¶ 61,118 (1997).

Western has separately filed for approval of generally applicable terms and conditions under its Open Access Transmission Tariff (Tariff) in Docket No. NJ98–1–000. These rate schedules will be utilized under the Tariff for service in the UGPR of Western, and they are potentially subject to FERC review under the standards of 16 U.S.C. 824k(a). Because Western's transmission rates were established in accordance with 10 CFR part 903, 18 CFR part 300 and the Delegation Order, if the rates submitted by Western are found to violate the statutory standards, they must be remanded to the Administrator for further proceedings.

Acronyms/Terms and Definitions

As used in this rate order, the following acronyms/terms and definitions apply:

Acronym/Term	Definition
$/kW-month	Monthly charge for capacity (i.e., $ per kilowatt (kW) per month).
12-cp	12-month coincident peak average.
Ancillary Services	Those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission System in accordance with good utility practice.
A&GE	Administrative and general expense.
Basin Electric	Basin Electnc Power Cooperative.
Control Area	An electric system or systems, bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Control Areas and contributing to frequency regulation of the Interconnection.
Corps of Engineers	U.S. Army Corps of Engineers.
DOE	U.S. Department of Energy.
DOE Order RA 6120.2	An order addressing power marketing administration financial reporting, used in determining revenue requirements for rate development.

Acronym/Term	Definition
Emergency Energy	Electric energy purchased by an electric utility whenever an event on the system causes insufficient operating capability to cover its own demand requirement.
Energy Imbalance Service	A service which provides energy correction for any hourly mismatch between a Transmission Customer's energy supply and the demand served.
Federal Customers	Western and Bureau of Reclamation customers taking delivery of long-term firm service under Firm Electric Service Contracts, and Project Use Power Customers.
FERC	Federal Energy Regulatory Commission.
FERC Order No. 888	FERC Order Nos. 888, 888–A, 888–B, and 888–C unless otherwise noted.
Firm Electric Service Contract	Contracts for the sale of long-term firm energy and capacity to Federal Customers, with contract rates of delivery based on an allocation of power from the Federal generation resource.
Firm Point-to-Point Transmission Service	Transmission service that is reserved and/or scheduled between Points of Receipt and Delivery.
Heartland	Heartland Consumers Power District.
IS	Integrated System.
ISO	Independent System Operator.
JTS	Joint Transmission System.
kW	Kilowatt; 1,000 watts.
kWh	Kilowatt-hour; the common unit of electric energy, equal to one kW taken for a period of 1 hour.
kW-month	Unit of electric capacity, equal to the maximum of kW taken during 1 month.
Load	A customer or an end-use device that receives power from the Transmission System.
LRS	Laramie River Station is a coal-fired generation plant near Laramie, Wyoming. LRS is a part of the Missouri Basin Power Project (MBPP).
Load-ratio share	Ratio of the Network Transmission Customer's coincident hourly load (including its designated network load not physically interconnected with the Transmission Provider) to the Transmission Provider's monthly Transmission System peak, calculated on a rolling 12-month basis.
Long-Term Firm Point-to-Point Transmission Service.	Firm Point-to-Point Transmission Service reservation with at least 12 consecutive equal monthly amounts.
MAPP	Mid-Continent Area Power Pool.
mill	Unit of monetary value equal to .001 of a U.S. dollar; i.e., 1/10th of a cent.
mills/kWh	Mills per kilowatt-hour.
MBMPA	Missouri Basin Municipal Power Agency.
MBSG	Missouri Basin Systems Group.
MVAR	Megavar, equal to 1,000,000 VARs
MW	Megawatt; equal to 1,000 kW or 1,000,000 watts.
NEPA	National Environmental Policy Act of 1969.
NERC	North American Electric Reliability Council.
Network Customer	An entity receiving transmission service pursuant to the terms of the Transmission Provider's Network Integration Transmission Service of the Tariff.
Non-Firm Point-to-Point	Point-to-Point Transmission Service under the Tariff that is reserved and scheduled on an as-available basis and is subject to interruption for economic reasons.
O&M	Operation and maintenance expense.
P–SMBP	Pick-Sloan Missouri Basin Program.
P–SMBP–ED	Pick-Sloan Missouri Basin Program-Eastern Division.
Point-to-Point Transmission Service	The reservation and transmission of capacity and energy on either a firm or a non-firm basis from designated Point(s) of Receipt to designated Point(s) of Delivery.
Provisional Rate Schedule	A Rate Schedule which has been confirmed, approved, and placed in effect on an interim basis by the Deputy Secretary of DOE.
Reclamation	Bureau of Reclamation, U.S. Department of the Interior.
Reactive Supply and Voltage Control From Generating Sources Service.	A service which provides reactive supply through changes to generator reactive output to maintain transmission line voltage and facilitate electricity transfers.
Regulation and Frequency Response Service	A service which provides for following the moment-to-moment variations in the demand or supply in a Control Area and maintaining scheduled interconnection frequency.
Reserve Services	Spinning Reserve Service and Supplemental Reserve Service.
Schedule	An agreed-upon transaction size (megawatts), beginning and ending ramp times and rate, and type of service required for delivery and receipt of power between the contracting parties and the Control Area(s) involved in the transaction.
Scheduling, System Control, and Dispatch Service.	A service which provides for (a) scheduling, (b) confirming and implementing an interchange schedule with other control areas, including intermediary control areas providing transmission service, and (c) ensuring operational security during the interchange transaction.
Service Agreement	The initial agreement and any amendments or supplements thereto entered into by the Transmission Customer and Western for service under the Tariff.
Short-Term Firm Point-to-Point Transmission Service.	Firm Point-to-Point Transmission Service with service of less duration than 1 year.
Spinning Reserve Service	Generation capacity needed to serve load immediately in the event of a system contingency. Spinning Reserve Service may be provided by generating units that are on-line and loaded at less than maximum output. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Spinning Reserve Service obligation.

Acronym/Term	Definition
Supplemental Reserve Service	Generation capacity needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time. Supplemental Reserve Service may be provided by generating units that are on-line but unloaded, by quick start generation or by interruptible load. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Supplemental Reserve Service obligation.
Supporting Documentation	Work papers which support the rate.
System	An interconnected combination of generation, transmission and/or distribution components comprising an electric utility, independent power producers(s) (IPP), or group of utilities and IPP(s).
Tariff	Western Area Power Administration Open Access Transmission Service Tariff, Docket No. NJ98–1–000.
Transmission Customer	Any eligible customer (or its designated agent) that receives transmission service under the Tariff.
Transmission Provider	Any utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce. UGPR, as operator of the IS, is the Transmission Provider for the purposes of this Federal Register notice.
Transmission System	The facilities owned, controlled, or operated by the Transmission Provider that are used to provide transmission service.
Transmission System Total Load	12-cp system peak for Network Transmission Service plus reserved capacity for all Firm Point-to-Point Transmission Service.
UGPR	This is the Upper Great Plains Customer Service Region of the Western Area Power Administration. Some places herein, UGPR maybe referenced generically as Western.
VAR	A unit of reactive power.
WAUGP	The NERC acronym for the Western Area Upper Great Plains control area. This control area is also known as the Watertown Control Area.
Watertown Operations Office	Western Area Power Administration, Upper Great Plains Customer Service Region, Operations Office, 1330 41st Street SE, Watertown, South Dakota 57201.
Western	This is the Western Area Power Administration, U.S. Department of Energy. Some places herein, Western is represented by the Upper Great Plains Customer Service Region (UGPR).

Effective Date

The Provisional Formula Rates will become effective on the first day of the first full billing period beginning on or after August 1, 1998, and will be in effect pending the FERC's approval of them or substitute formula rates on a final basis through July 31, 2003, or until superseded. These formula rates will be applied under Western Area Power Administration Open Access Transmission Service Tariff (Tariff), Docket No. NJ98–1–000, and conform with the spirit and intent of the FERC Order No. 888. These rates are implemented pursuant to Schedules 1 through 8 and Attachment H of the Tariff.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, have been followed by Western in the development of these formula rates and schedules. The Provisional Rates are for new services. Therefore, they represent a major rate adjustment as defined at 10 CFR 903.2(e) and 903.2(f)(1). The distinction between a minor and a major rate adjustment is used only to determine the public procedures for the rate adjustment.

The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. On March 28, 1997, UGPR distributed an Advance Announcement of Transmission Rate Adjustment to all UGPR customers and interested parties. UGPR gathered comments and suggestions on the advance announcement through May 2, 1997.

2. UGPR published a **Federal Register** notice on September 15, 1997 (62 FR 48272), officially announcing the proposed open access transmission and ancillary service rates adjustment, initiating the public consultation and comment period, announcing the public information and public comment forums, and outlining procedures for public participation.

3. On September 23, 1997, UGPR mailed a copy of the "Upper Great Plains Region Proposed Open Access Transmission and Ancillary Service Rates" brochure to all UGPR Transmission Customers and other interested parties. Comments received on the advance announcement were addressed in this brochure.

4. UGPR held public information forums on October 16, 1997, in Billings, Montana, and October 17, 1997, in Sioux Falls, South Dakota. Western representatives explained the need for the rate adjustment in greater detail and answered questions.

5. UGPR held comment forums on November 13, 1997, in Billings, Montana, and November 14, 1997, in Sioux Falls, South Dakota, to provide the public an opportunity to comment for the record. Representatives from seven organizations made comments at these forums.

6. Fifty comment letters were submitted during the 90-day consultation and comment period. The consultation and comment period ended on December 15, 1997. All comments have been considered in the preparation of this Rate Order.

Comments

Representatives of the following organizations made oral comments:

Basin Electric Power Cooperative, Bismarck, North Dakota
City of Sioux Center, Iowa
Minnesota Corn Processors, Marshall, Minnesota
Missouri Basin Municipal Power Agency, Sioux Falls, South Dakota
City of Marshall, Minnesota
Northwestern Public Service Company, Huron, South Dakota
Heartland Consumers Power District, Madison, South Dakota

The following individuals and organizations submitted written comments:

Jon Christensen, Member of Congress, 2nd District Nebraska
Missouri Basin Municipal Power Agency, Sioux Falls, South Dakota
Doug Bereuter, Member of Congress, 1st District, Nebraska
Bill Barrett, Member of Congress, 3rd District, Nebraska
Basin Electric Power Cooperative, Bismarck, North Dakota
State of South Dakota, Pierre, South Dakota
Minnesota Valley Cooperative, Montevideo, Minnesota
Verendrye Electric Cooperative, Inc., Velva, North Dakota
Douglas Electric Cooperative, Inc., Armour, South Dakota
Charles Mix Electric Association, Inc., Lake Andes, South Dakota
Lake Region Electric, Webster, South Dakota
Union County Electric Cooperative, Inc., Elk Point, South Dakota
Bon Homme Yankton Electric Association, Inc., Tabor, South Dakota
East River Electric Power Cooperative, Madison, South Dakota
Whetstone Valley Electric Cooperative, Inc., Milbank, South Dakota
Renville Sibley Cooperative Power Association, Danube, Minnesota
Codington-Clark Electric Cooperative, Inc., Watertown, South Dakota
Traverse Electric Cooperative, Inc., Wheaton, Minnesota
Intercounty Electric Association, Inc., Mitchell, South Dakota
H–D Electric Cooperative, Inc., Clear Lake, South Dakota
Dakota Energy Cooperative, Inc., Huron, South Dakota
FEM Electric Association, Inc., Ipswich, South Dakota
Tri County Electric Association, Inc., Plankinton, South Dakota
Sioux Valley Southwestern Electric, Colman, South Dakota
McCook Electric Cooperative, Salem, South Dakota
Kingsbury Electric Cooperative, Inc., De Smet, South Dakota
Fort Peck Tribes, Poplar, Montana
Lyon-Lincoln Electric Cooperative, Inc., Tyler, Minnesota.
Central Power Electric Cooperative, Minot, North Dakota
City of Elk Point, South Dakota
Cooperative Power, Eden Prairie, Minnesota
Oahe Electric Cooperative, Inc., Blunt, South Dakota
Powder River Energy Corporation, Sundance, Wyoming
Nishnabotna Valley Rural Electric Cooperative, Harlan, Iowa
Northwest Iowa Power Cooperative, Le Mars, Iowa
Turner-Hutchinson Electric Cooperative, Inc., Marion, South Dakota
Oliver-Mercer Electric Cooperative, Inc., Hazen, North Dakota
Northern Electric Cooperative, Inc., Bath, South Dakota
Minnkota Power Cooperative, Inc., Grand Forks, North Dakota
Lincoln Electric System, Lincoln, Nebraska
Lincoln-Union Electric Company, Alcester, South Dakota
Western Iowa Power Cooperative, Denison, Iowa
Central Montana Electric Power Cooperative, Billings, Montana
Northern States Power Company, Minneapolis, Minnesota
Northwestern Public Service Company, by Law Offices of Wright & Talisman, P.C., Washington, DC
Nebraska Public Power District, York, Nebraska
Heartland Consumers Power District, comments submitted by Sutherland, Asbill & Brennan, LLP, Washington, DC
Mid-West Electric Consumers Association, Denver, Colorado

Pick-Sloan Missouri Basin Program-Eastern Division Project Description

The initial stages of the Missouri River Basin Project were authorized by section 9 of the Flood Control Act of 1944 (58 Stat. 887, 891, Pub. L. No. 78–534). It was later renamed the Pick-Sloan Missouri Basin Program (P–SMBP). The P–SMBP is a comprehensive program, with the following authorized functions: flood control, navigation improvement, irrigation, municipal and industrial water development, and hydroelectric production for the entire Missouri River Basin. Multipurpose projects have been developed on the Missouri River and its tributaries in Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming.

UGPR markets significant quantities of Federally generated hydroelectric power from the Pick-Sloan Missouri Basin Program-Eastern Division (P–SMBP–ED). Western owns and operates an extensive system of high-voltage transmission facilities which UGPR uses to market approximately 2,400 MW of capacity from Federal projects within the Missouri River Basin. This capacity is generated by eight powerplants located in Montana, North Dakota, and South Dakota. UGPR utilizes the transmission facilities of Western and others to market this power and energy to customers located within the P–SMBP–ED. This marketing area includes Montana, east of the Continental Divide, all of North Dakota and South Dakota, eastern Nebraska, western Iowa, and western Minnesota.

History of Transmission System

Prior to 1959, Reclamation provided the total power supply needs to preference customers in the P–SMBP–ED marketing area. Reclamation constructed a Federal transmission system to supply power to those preference customers. In 1959, Reclamation notified the preference customers that it could no longer meet the total projected power needs past the year 1964 and urged these entities to make their own arrangements for supplemental power supply. Reclamation and certain supplemental power suppliers agreed to construct future transmission facilities within the region using a single system, joint planning concept.

In 1963, the Joint Transmission System (JTS) was created when Reclamation and Basin Electric Power Cooperative (Basin Electric) entered into the Missouri Basin Systems Group (MBSG) Pooling Agreement (Agreement). In 1977, Western was established and assumed the responsibility for the Reclamation-owned Federal transmission system and existing contracts. Heartland Consumers Power District (Heartland) and Missouri Basin Municipal Power Agency (MBMPA) were organized in the mid-1970's and subsequently signed the MBSG Agreement. Basin Electric, Heartland, and MBMPA all supply supplemental power to certain preference customers and are commonly referred to as supplemental power suppliers. The MBSG Agreement provided for joint planning and operation of some, but not all, of the transmission facilities for the JTS participants. Since then, the JTS participants have augmented the existing Federal transmission system, using a single system, joint planning concept, rather than build separate transmission systems themselves. Specific JTS rights and obligations are detailed in bilateral agreements between Western and the participants.

The MBSG Agreement also provides a mechanism for sharing the cost of the transmission facilities that considers the participants' ownership of the transmission facilities that comprise the JTS. The JTS cost-sharing method is based upon the concept that the original facilities were capable of delivering the Federal generation to load plus approximately 200 MW, per studies performed in the 1963 timeframe. Basin

Electric's Leland Olds No. 1 generator was the first generation added and was 210 MW.

The next generation addition did not occur until after 1969. Studies for each increment of generation thereafter demonstrated a need for transmission additions. Western had sufficient capacity in its original system to serve its own load, and since neither its generation nor its load was increasing, did not need the additional facilities to deliver to its loads. Therefore, it was agreed Western would not share in the cost of additional facilities provided by others. However, Western would share in the revenues generated by the system to the extent Western provided facilities and incurred investment costs after 1969. The post-1969 additions are the basis for the cost-sharing ratios.

The JTS cost-sharing method is as follows. Costs for the JTS are summed for Western, Basin Electric, Heartland, and MBMPA to arrive at a total transmission system cost. The total transmission system cost for the year is divided by the generation input for the year (4,127,000 kW for 1997) to determine the JTS cost per kW-year of generation input. The JTS participants, except Western, then pay into the JTS according to their generation input. These JTS revenues are then distributed back to the participants, including Western, based upon the ratio of costs associated with contributed facilities constructed since 1969.

Integrated System Description

Utilizing the single system, joint planning concept created by MBSG, the UGPR, Basin Electric, and Heartland combined their transmission facilities to form the Integrated System (IS) and herein develop transmission and ancillary service rates for transmission over the IS. This action is necessary because UGPR, Basin Electric and Heartland, whose facilities are fully integrated, did not have rates suitable for long-term open access Transmission Service. The transmission facilities included in the IS are transmission lines, substations, communication equipment, and facilities related to operation, maintenance, and support of the Transmission System. UGPR has been designated as the operator of the other participants' transmission facilities and as such will contract for service, determine and post on the Open Access Same-Time Information System available transmission capacity, bill for service, collect payments, distribute revenue to each participant, etc. The IS consists of the transmission facilities owned by Basin Electric and Heartland east of the East-West electrical separation in the United States, the transmission facilities owned by Western in the P–SMBP–ED, and the Miles City DC Tie owned by Western and Basin Electric. These facilities interconnect with utilities in the states of Montana, North Dakota, South Dakota, Nebraska, Iowa, Minnesota, and Missouri and in addition include facilities which interconnect with Canada.

The approach for formation of the IS was to include facilities which followed the spirit and intent of the FERC Order No. 888 and to make the system most useful to all transmission requesters. The "seven factor test" defined in the FERC Order No. 888 was used to determine the distribution facilities that were excluded from the IS Transmission System. Several major facilities which were not a part of the JTS have been included in the IS. The second 345-kV transmission line between the Antelope Valley and Leland Olds generating stations, which meets the standards for acceptable transmission facilities set in the FERC rulings on filings by other transmission entities, has been included. The 230-kV transmission line between Tioga, North Dakota, and Boundary Dam, which provides access to generation and loads in Canada, has been included in the IS. The IS also includes the Miles City DC Tie, which opens the markets between the East-West electrical separation of the United States and increases access to other utilities. The IS differs from the JTS in that it does not include the Laramie River Station (LRS) transmission facilities. These facilities were not considered for inclusion in the IS since agreement of all the Missouri Basin Power Project (MBPP) participants would be required.

IS Transmission Service

UGPR will offer Network Integration (Network), Firm Point-to-Point and Non-Firm Point-to-Point (Point-to-Point) Transmission Service on the IS. The service offered is the transmission of energy and capacity from Points of Receipt to Points of Delivery on the IS. The IS Transmission Rates include the cost of Scheduling, System Control, and Dispatch Service, therefore an additional charge for this ancillary service is not required for transmission users.

Western, Basin Electric, and Heartland will take IS Transmission Service. Transmission Service to UGPR's Federal customers will continue to be bundled in their Firm Electric Service rate under existing contracts which expire in 2020.

UGPR prepared a cost of service study to develop the formula rates for the IS. UGPR is seeking approval of formula rates for calculation of Point-to-Point IS Transmission Rates, the Network IS Transmission Service revenue requirement, and ancillary service rates. UGPR is requesting the FERC to confirm that these rates are not unjust, unreasonable, unduly discriminatory, or preferential. The rates will be recalculated every year, effective May 1, based on the approved formula rates and updated financial and load data. UGPR will provide customers notice of changes in rates no later than April 1 of each year.

Ancillary Services

UGPR will offer to all customers the six ancillary services defined by the FERC. The six ancillary services are: (1) Scheduling, System Control, and Dispatch Service; (2) Reactive Supply and Voltage Control from Generation Sources Service; (3) Regulation and Frequency Response Service; (4) Energy Imbalance Service; (5) Spinning Reserves Service; and (6) Supplemental Reserves Service. The open access ancillary service formula rates are designed to recover only the costs incurred for providing the service(s). The charges for ancillary services are based on the cost of resources used to provide these services.

Existing and Provisional Rates

The following is a comparison of existing rates, and the Provisional Rates using 1997 data. These rates will be updated annually based on the approved formula rates. This is the first transmission rate filing made by the P-SMBP-ED. Prior to this, transmission services were provided through bilateral contract arrangements, therefore there is not an existing rate schedule for comparison.

COMPARISON OF EXISTING AND PROVISIONAL FORMULA RATES

Class of service	Existing rate schedule and rate	Rate schedule August 1, 1998
Network Transmission	N/A	UGP–NT1, Load-ratio share of 1/12 of the Annual Revenue Requirement for IS Transmission Service of $95,725,420.
Firm Point-to-Point Transmission	N/A	UGP–FPT1, Maximum of $2.87/kW-month.
Non-Firm Point-to-Point Transmission	N/A	UGP–NFPT1, Maximum of 3.93 mills/kWh.
Scheduling, System Control, and Dispatch	N/A	UGP–AS1, $46.06 per schedule per day for non-transmission customers.
Reactive Supply and Voltage Control from Generation Sources.	N/A	UGP–AS2 $0.07/kW-month.
Regulation and Frequency Response	N/A	UGP–AS3, $0.05/kW-month.
Energy Imbalance	N/A	UGP–AS4, For negative excursions outside of 3 percent bandwidth UGPR reserves the right to charge 100 mills/kWh. Positive excursions outside the bandwidth will be lost to the system.
Spinning/Supplemental Reserves	N/A	UGP–AS5 and 6, $0.12/kW-month of customer load.

Certification of Rates

Western's Administrator has certified the transmission and ancillary service rates placed into effect on an interim basis herein are the lowest possible consistent with sound business principles. The formula rates have been developed in accordance with agency administrative policies and applicable laws.

IS Transmission Service Discussion

The formula rates for Network and Point-to-Point Transmission Service will be implemented August 1, 1998. The rates will be recalculated annually based on updated financial and load data. Network service charges will be based on the Transmission Customer's load-ratio share of the annual revenue requirement for transmission. Firm Point-to-Point service will be based on reserved capacity on the Transmission System.

IS Transmission System Total Load: The IS Transmission System Total Load is the 12-cp system peak for Network Transmission Service plus the reserved capacity for all Long-Term Firm Point-to-Point Transmission Service.

The IS Transmission System Total Load is calculated as follows based upon 1997 data:

Network Transmission Load	2,447,000
Long-Term Firm Point-to-Point Reserved Capacity	331,000
IS Transmission System Total Load	2,778,000

Annual Costs: Western has calculated the annual cost of providing the various transmission and ancillary services using a FERC recognized methodology for annual cost calculation with fixed charge rates for various cost components. The cost components applicable to Western include operation and maintenance (O&M), administrative and general expense (A&GE), depreciation, and the cost of capital. These components are displayed as fixed charge rates or percentages of net investment. These fixed charge rates are then summed to arrive at a total fixed charge rate associated with the particular service for which a rate is being calculated. The fixed charge rate calculation for the various transmission and ancillary services can be summarized with the following formula:

+ O&M ÷ Net investment
+ A&GE ÷ Net investment
+ Depreciation expense ÷ Net investment
+ Annual interest expense ÷ Unpaid investment balance
= Total fixed charge rate.

To arrive at the annual cost of providing transmission service or one of the ancillary services, the total fixed charged rate is applied to the net investment allocated to the service as follows:

Total fixed charge rate × Net investment = Annual cost of providing service.

The source for UGPR's annual O&M, A&GE, depreciation expense, interest expense, and investment is the *Results of Operations for the Upper Great Plains Customer Service Region—Pick-Sloan Missouri Basin.* The source for unpaid investment balances is the amount reported in the *Historical Financial Document in Support of the Power Repayment Study for the Pick-Sloan Missouri Basin Program.* The source for Heartland's data is *Heartland Consumers Power District Annual Report.* The sources for Basin Electric's data are Basin Electric's *Consolidated Financial Statement, Rural Utility Service Form 12,* and other accounting records.

Annual Revenue Requirement for IS Transmission Service: The rates for IS Transmission Service (Network and Point-to-Point) are based on a revenue requirement that recovers the annual costs of Western, Basin Electric, and Heartland associated with providing IS Transmission Service plus any facility credits paid to Transmission Customers. The revenue requirement for IS Transmission Service includes the cost for Scheduling, System Control, and Dispatch Service needed to provide transmission service, therefore an additional charge for this ancillary service is not required for transmission users. The annual transmission costs are offset by appropriate transmission revenue credits to avoid over recovery of costs. The Annual Revenue Requirement for IS Transmission Service can be summarized with the following formula:

Annual IS transmission costs of UGPR, Basin Electric, and Heartland
+ Transmission Customer facility credits
− Transmission revenue credits
= Annual Revenue Requirement for IS Transmission Service.

Using 1997 data, the Annual Revenue Requirement for IS Transmission Service is:

$116,340,141
+ $194,444
− $20,809,165
= $95,725,420

Transmission Customer facility credits are credits paid to Transmission Customers for facilities that are integrated with the IS and increase both the capability and the reliability of the IS. The credits will be addressed in individual agreements, and appropriate adjustments will be made in subsequent rate calculations. The IS participants will evaluate requests for facility credits consistent with the FERC's guidance in the FERC Order No. 888, other relevant FERC policy, and the terms of the Tariff.

Transmission revenue credits include revenue from sales of Non-Firm,

discounted Firm, and Short-Term Firm Point-to-Point Transmission Service; revenue from existing transmission agreements; revenue from Scheduling, System Control, and Dispatch Services; and any facility charges for transmission facility investments included in the revenue requirement. The following revenue credits have been applied in the IS Transmission Rate. The estimated Non-Firm Point-to-Point Transmission Service credit of $11,531,175 is based on 1997 non-firm energy sales on the IS Transmission System and actual sales of Non-Firm Point-to-Point Transmission Service on the IS Transmission System during 1997. Revenue from existing transmission agreements was $9,277,990 in 1997.

Network IS Transmission Service: The monthly charge for Network IS Transmission Service is the product of the Network Customer's load-ratio share times one-twelfth (1/12) of the Annual Revenue Requirement for IS Transmission Service of $95,725,420. The load-ratio share is the ratio of the Network Customer's coincident hourly load to the monthly IS Transmission System peak minus the coincident peak for all IS Firm Point-to-Point Transmission Service plus the IS Firm Point-to-Point reservations, calculated on a rolling 12-cp basis.

Firm Point-to-Point IS Transmission Service: The rate for Firm Point-to-Point IS Transmission Service is the Annual Revenue Requirement for IS Transmission Service divided by the IS Transmission System Total Load. The formula for the monthly rate is as follows: Annual Revenue Requirement for IS Transmission Service ÷ IS Transmission System Total Load ÷ 12 months, or, using 1997 data, $95,725,420 ÷ 2,778,000 kW ÷ 12 months. The formula produces a rate of $2.87/kW-month for Firm Point-to-Point Transmission Service. Firm Point-to-Point Transmission Service will be offered on an "up to" basis at daily, weekly, monthly, and yearly rates.

Non-Firm Point-to-Point IS Transmission Service: Non-Firm Point-to-Point IS Transmission Service will be offered at a rate up to, but never higher than, the Firm Point-to-Point rate. The formula for the rate is as follows: Monthly Firm Point-to-Point Rate ÷ 730 hours/month, or using 1997 data, $2.87/kW-month ÷ 730 hours/month. The formula produces a rate of 3.93 mills/kWh. Non-Firm Point-to-Point IS Transmission Service will be offered at hourly, daily, weekly, and monthly rates.

Transmission Service Comments

The following comments were received during the public comment period. UGPR paraphrased and combined comments when it did not affect the meaning. UGPR's response follows each comment. Changes were made in the formula rates and calculations as a result of the comments noted.

Comment: UGPR should use the IS to provide open access transmission and ancillary services. The following comments were made in support of this comment. IS is consistent with the FERC Order No. 888. The system is integrated since the facilities are jointly planned, constructed, and operated as one system. The system cannot be divided into separate systems defined by ownership and still serve its function as a reliable, efficient Transmission Provider. One IS rate eliminates pancaking of transmission tariffs and maximizes facility usage. IS will maintain the postage stamp rate concept of paying once to travel anywhere on the system. The IS will minimize revenue shifts.

Response: Western concurs with these comments.

Comment: Western should remove any end-use-load-serving substations and transmission facilities. UGPR should use the "seven factor test" to determine the facilities to exclude from the IS.

Response: UGPR has re-evaluated the facilities to be included in the IS using the "seven factor test" and made appropriate adjustments to the cost. Based upon the re-evaluation, UGPR removed appropriate end-use-load-serving substation and transmission line costs from the Annual Revenue Requirement for IS Transmission Service.

Comment: UGPR should explain guidelines used to determine the allocation of transmission facility and substation revenue requirements to generation versus transmission.

Response: UGPR evaluated the substations and transmission lines based on their usage (generation versus transmission). The substation and transmission line costs were then included in their respective categories. Watertown Operations Office costs were split based on the classification of Full Time Equivalent employees in generation or transmission. Communication facilities were split based on communication circuit usage.

Comment: UGPR should exclude the cost of non-Federal facilities and develop a "Western only" rate. UGPR should remove Western's and Basin Electric's generator step-up transformers, West-side facilities, the Miles City DC Tie, and Basin Electric's generator outlet lines. UGPR should include Heartland's LRS transmission facilities. UGPR should consider separate rates for the East and West regions of its system.

Response: UGPR, Basin Electric, and Heartland facilities are integrated. The rate includes each entity's facilities that are integrated. Therefore, it is inappropriate to develop a "Western only" rate.

The FERC has allowed generator step-up transformers to be included in transmission rates. Western's costs include step-up transformers in the Corps switchyards which perform a transmission function. Basin Electric's costs also include step-up transformers.

Western, Basin Electric, and Heartland have separated their costs between transmission and generation and have included only transmission related costs in the Transmission Service revenue requirement. Basin Electric's high-voltage lines referred to as "generator outlet lines" meet the "seven factor test" and are, therefore, included in the Transmission Service revenue requirement.

The IS participants did not consider the LRS facilities for inclusion in the IS since agreement of all the MBPP participants would be required.

UGPR operates under a unique situation in that it utilizes generation and transmission facilities located on both sides of the East-West electrical separation in Montana to meet its responsibilities in the Mid-Continent Area Power Pool (MAPP). UGPR has always operated all of its facilities on a single system basis. UGPR has marketed the generation plants on both sides of the electrical separation across the entire P–SMBP–ED and integrated deliveries from its resources for service to all UGPR power customers. The FERC has held that when an entity is able to adjust, second-by-second, the power flows over its entire system, including direct current ties, to integrate resources, the entity is utilizing its system as a single integrated transmission system and has allowed total system costs to be rolled into the IS Transmission Rate. The Miles City DC Tie provides some instantaneous support to the East-side transmission system and therefore contributes to the security aspect of reliability as defined by the North American Electric Reliability Council (NERC). The Miles City DC Tie provides reliability benefits to MAPP by instantaneously responding to disturbances on the East-side transmission systems through MW

reductions and MVAR support. Therefore, the Miles City DC Tie and the transmission facilities in the East and West regions of the UGPR system are included in the IS rates.

Comment: If UGPR changes its rates to the IS rates which recover the cost of Basin Electric and Heartland facilities, it will cause Western's firm power rate to increase.

Response: Western has existing bilateral contracts with Basin Electric and Heartland. Western will continue the benefits and obligations contained in those contracts through their terms. The continuation of those benefits will minimize any firm power rate impacts which may result from the use of the IS by Western for the delivery of firm power.

Comment: Several comments made in the public process have compared the existing JTS rate used in the bilateral agreements between Western, Basin Electric, and Heartland to the proposed rate and have stated that the JTS rate is either below cost or the IS rates are inflated. Their comparisons and arguments are based on a JTS rate of $26.27/kW-year and an IS rate of $36.84/kW-year.

Response: The JTS rate is a cost-based rate for the combined facilities of Western, Basin Electric, Heartland, and MBMPA. The rate itself is applied to each participants' connected generation and other resource inputs. A generation or input based rate, like JTS, includes planning reserves (15 percent), losses (approximately 4 percent), surplus generation and the load in the billing units for recovery of the cost.

The IS rate is a cost-based rate for the combined facilities of Western, Basin Electric, and Heartland. In addition, MBMPA has asked and will receive credit for certain facilities at Irv Simmons Substation. The rate is applied to the loads on the Transmission System. A load-based rate, like the IS rate, includes only the load in the billing units for the recovery of cost.

Input-based billing units and load-based billing units are not directly comparable. Although input-based rates (JTS) and load-based rates (IS) recover equivalent costs, they have different billing units. Therefore, the representation of the rate in $/kW-year is not identical and cannot be compared one-for-one. If each rate is applied to the correct billing units they both recover the total and appropriate costs.

Comment: UGPR firm power customers should not be required to recover Basin Electric's and Heartland's stranded costs.

Response: The rate design for the IS does not recover the stranded costs of any parties (Western, Basin Electric, or Heartland). If costs are determined to be stranded they will be addressed in a separate contract between the entity holding the stranded costs and the Transmission Customer, as described in the Tariff filed by Western in Docket No. NJ98–1–000.

Comment: Who will review the costs for Basin Electric and Heartland to determine whether they are appropriate, and what recourse do the customers have to question the costs?

Response: Basin Electric and Heartland have submitted their data as a part of this public process. In addition, their data is and will continue to be submitted to MAPP, just as any other transmission-owning MAPP member.

On or about April 1 of each year the updated transmission cost data for Western, Basin Electric, and Heartland will be available for review. At this time a notice will be sent to Transmission Customers of changes to the rates that will be effective May 1.

The Transmission Customers' recourse is similar to any other entity in a public process or in the course of MAPP review.

Comment: Western should ask the FERC to review the Open Access Transmission and Ancillary Service Rates for consistency with the standards of Section 212 of the FPA.

Response: In addition to seeking final confirmation under the Delegation Order, Western is requesting the FERC review the proposed transmission rates for the UGPR for consistency with the standards of section 212 (a) of the FPA, 16 U.S.C. 824k (a). In doing so, Western is asking the FERC to determine that its rates are comparable to what it charges other customers and conform to the standards under the Delegation Order in a manner similar to the FERC's finding in *United States Department of Energy-Bonneville Power Administration,* 80 FERC ¶ 61,118 (1997).

Western has separately filed for approval of generally applicable terms and conditions under its Tariff in Docket No. NJ98–1–000. These rate schedules will be utilized under the Tariff for service in the UGPR of Western, and they are potentially subject to FERC review under the standards of 16 U.S.C. 824k (a).

Comment: Basin Electric's cost of capital calculation should be adjusted as follows: (1) the interest expense shown on page 89, line 9, column (b) in the brochure should be used in the calculation; (2) a 7 percent return on equity should be used; (3) Basin Electric's total cost of capital should be divided by its total capitalization rather than net plant investment to arrive at Basin Electric's weighted cost of capital.

Response: Basin Electric used the interest expense shown on Rural Utility Service Form 12a, line 22, column b. This amount is the actual interest expense for the year. The interest expense shown on page 89 of the brochure is based on an accrual schedule rather than actual interest expense.

Basin Electric has no basis for using a 7 percent return on equity. In the revenue requirement calculation in this **Federal Register** notice, Basin Electric utilizes the 10 percent margin for interest it charges its members which equates to a return on equity of approximately 9 percent. Since Basin Electric now uses its margin for interest to calculate its cost of capital, issue (3) above is no longer relevant.

Comment: Heartland should reduce their return on equity from 13 percent to 7 percent because 13 percent far exceeds the return on equity the FERC is allowing investor-owned utilities.

Response: Heartland has no basis for using a 7 percent return on equity. In this **Federal Register** notice Heartland calculated its cost of capital using its bond covenant requirement, similar to Basin Electric's margin for interest method. Heartland is required by Section 8.2 of its Bond Resolution to maintain rates at such levels that when revenues from rates are combined with other funds that the total amount will be sufficient to meet 1.15 times the debt service coverage requirement. Heartland develops rates for its customers on this basis, and it therefore uses the same approach here.

Comment: Basin Electric should allocate A&GE and general plant costs between IS transmission facilities and other transmission facilities and only include the portion allocated to IS transmission facilities in the IS Transmission System revenue requirement.

Response: UGPR agrees with this comment, and Basin Electric's costs have been adjusted accordingly.

Comment: The IS rate causes some MBMPA members to pay twice for the same transmission service.

Response: The MBMPA members will not pay twice for usage of the IS for the same service. Members of MBMPA will pay for transmission and ancillary services on the MBMPA resource separately from the service they receive from Western in its bundled firm power service.

Comment: Western is not charging itself for the Basin Electric and Heartland costs. Therefore, the rates it charges itself are not comparable.

Response: Western will be taking all service under the IS rates and therefore is charging itself for the Basin Electric and Heartland costs. Cost sharing benefits and obligations associated with service under existing bilateral contracts will continue until contract expiration.

Comment: The IS should provide for discounted rates.

Response: Western's Tariff and IS rates allow for "up to" rates for the Firm and Non-Firm Point-to-Point Transmission Service rates. IS rates, including discounts to those rates, will be posted on the MAPP Open Access Same-Time Information System (OASIS) and will be available under the terms and conditions as posted.

Comment: Basin Electric Class A member loads and Western's preference customer loads should be treated as native load in the determination of the IS rates.

Response: Basin Electric Class A member loads and Western's preference customer loads are treated as native load and are included in the IS Network load.

Comment: Western should remove the portion of its power supply and marketing expenses associated with power marketing from its O&M expenses.

Response: Western removed purchase power costs from O&M expenses. In addition, Western's remaining O&M expenses (including power marketing) were split between generation and transmission based on the ratio of generation investment to total investment and transmission investment to total investment respectively. Only the portion of O&M expenses assigned to transmission was included in the transmission rate.

Comment: Western should use actual non-firm sales to calculate the revenue credit for Western's use of the Transmission System to make non-firm sales.

Response: Western agrees with this comment and has used actual 1997 non-firm sales in the calculation of the IS Transmission Rate.

Comment: The load associated with existing transmission contracts should be included in the load denominator rather than as a revenue credit.

Response: Western did not include the transactions covered under existing transmission contracts in the IS load because these transactions are at discounted rates and including them in the load would cause under recovery of the IS revenue requirement. As these transmission contracts expire and the loads associated with them are converted to Western's Tariff and IS Transmission Rates, they will be included in the IS load.

Comment: Western adjusted Basin Electric's Network load for Western peaking power service received, Dakota Gasification Company (DGC) load, and Neal IV generation but has not explained or justified these adjustments. Western should explain or correct this calculation.

Response: Firm peaking power service sold to Basin Electric was adjusted out of Basin Electric's Network load and included in Western's Network load because Western is responsible for transmission of peaking power service. DGC load was adjusted out of Basin Electric's Network load in the September 15, 1997, proposed IS Transmission Rates. DGC load is included in Basin Electric's Network load in the IS Transmission Rates in this **Federal Register** notice. Basin Electric's load served by Neal IV generation is adjusted out of Basin Electric's Network load because it does not utilize the IS Transmission System.

Comment: MAPP Service Schedule F payments to the IS participants should be shown separately as revenue credits to Western, Basin Electric, and Heartland revenue requirements since these revenues are received separately.

Response: In the proposed IS rates, estimates of MAPP Service Schedule F payments were shown separately for each IS participant as the "Calculated Value of Non-Firm Point-to-Point Transmission Services." As the operator of the IS system, Western anticipates receiving all MAPP Service Schedule F payments made to the IS participants and then distributing these revenues back to the participants according to the IS agreement.

Comment: Several comments were received that Western does not have the authority to develop an IS Transmission Rate with Basin Electric and Heartland based upon its ratemaking requirements.

Response: Western's authority to develop an IS Transmission Rate is derived from the DOE Organization Act (42 U.S.C. 7101 et. seq.), and the Reclamation Act of 1902 (43 U.S.C. 371 et. seq.), as amended and supplemented by subsequent enactments. Western's Administrator has been given wide discretion in fulfilling those power marketing functions. Western's use of the IS rate is also consistent with the DOE policy regarding Power Marketing Administration's compliance with the spirit and intent of the FERC Order No. 888 and the FERC's preference for regional transmission groups.

Western's role as the operator of the IS is analogous to the responsibility it had with the JTS. Western was responsible for collection of funds from non-Federal participants and then distributed those funds based upon contractual obligations. Western has also approved the rate developed pursuant to the contracts between the JTS members on a 2-year basis prior to implementation. Western is the operator of the JTS and is responsible for establishing whether new uses of the JTS could be entertained and meet established reliability criteria.

Western was established pursuant to sections 302(a)(1) (E) and (F) and 302(a)(3) of the DOE Organization Act. Section 302(a)(11)(E) transferred to Western the power marketing functions of Reclamation, including the construction, operation, and maintenance of transmission lines, and attendant facilities. Western is complying with the expressed ratemaking authority contained in section 9(c) of the Reclamation Act of 1939 as well as section 5 of the Flood Control Act of 1944. Section 9(c) states that:

> Any sale of electric power or lease of power privileges, made by the Secretary in connection with the operation of any project or division of a project, shall be for such periods, not to exceed forty years and at such rates as in his judgment will produce power revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost, * * *

The IS rate does ensure that Western will recover an appropriate share of the investment in the Federal transmission facilities in the associated projects.

Development of the IS Transmission Rate is also consistent with section 5 of the Flood Control Act of 1944. Section 5 provides:

> Electric power and energy generated at reservoir projects under the control of the War Department and in the opinion of the Secretary of War not required in the operation of such projects shall be delivered to the Secretary of the Interior, who shall transmit and dispose of such power and energy in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles, the rate schedules to become effective upon confirmation and approval by the Federal Power Commission. Rate schedules shall be drawn having regard to the recovery (upon the basis of the application of such rate schedules to the capacity of the electric facilities of the projects) of the cost of producing and transmitting such electric energy, including the amortization of the capital investment allocated to power over a reasonable period of years. Preference in the sale of such power and energy shall be given to public bodies and cooperatives. The Secretary of Interior is authorized, from funds to be appropriated by the Congress to construct or acquire, by purchase or other agreement, only such

transmission lines and related facilities as may be necessary in order to make the power and energy generated at said projects available in wholesale quantities for sale on fair and reasonable terms and conditions to facilities owned by the Federal government, public bodies, cooperatives, and privately owned companies. All moneys received from such sales shall be deposited in the Treasury of the United States as miscellaneous receipts.

Development of the IS Transmission Rate by Western is consistent with the obligation to transmit and dispose of power and energy while encouraging widespread use of the Federal facilities consistent with sound business practices. The integration of the Federal facilities with the non-Federal facilities enables the marketing of Western's resource as well as encouraging the widespread use of the Federal transmission facilities in the Missouri River Basin. As stated above, this philosophy is repaying the Federal investment through the rate schedules as they are recovering the appropriate costs of producing and transmitting that resource. This practice is also a sound business principle given the current FERC philosophy which encourages widespread use of transmission resources.

Section 5 of the Flood Control Act of 1944 also permits Western to construct or acquire transmission lines that are necessary to deliver the Federal resource. In order to deliver that resource, including sales of surplus generation sold on a non-firm basis, and meet Western's contractual obligations, it is necessary to use the IS for reliability reasons. This has been confirmed in the Initial Decision in *Missouri Basin Municipal Power Agency*, 82 FERC ¶ 63,015 (1998).

Comment: Several comments received stated that Western is violating the Anti-Deficiency Act and various fiscal obligations by participating in the IS.

Response: The Anti-Deficiency Act, 31 U.S.C. 1341(a)(1), states that an officer of the Federal Government may not involve the Government in a contract or obligation requiring the payment of money prior to an appropriation unless authorized by law. Western has the responsibility to meet all of its contractual obligations that have been incurred pursuant to Reclamation Law. Western is annually appropriated money to perform its mission, including meeting the obligations it has incurred pursuant to its contracting authority. Western does utilize the IS to meet these contractual obligations, and hence money has been appropriated to carry out the functions as described under the DOE Organization Act. In addition, Western's contracts contain General Power Contract Provisions which specifically state that any activity provided for under those contracts are "contingent on appropriations."

Comment: Other comments received stated that Federal law prohibits "payments to third parties."

Response: To the contrary, 16 U.S.C. 833(i) and 825(s) do not state that third party payments are unlawful. They do not address third party payments at all. They do contain language indicating Congress' intention that all money which the United States receives from sales of power generated at Fort Peck Project and the Projects under control of the War Department (now the Corps operated facilities) are to be deposited in Treasury. Western is not violating this statute as a result of operating the IS. Western will deposit money it receives for debts due the United States for sales of its resource into the Treasury in the same manner it has in the past. However, money received on behalf of Basin Electric and Heartland will not be received as a result of debts owed to the United States, but will be received for debts owed Basin Electric and Heartland. Therefore, money received on their behalf is not required to be deposited into the Treasury.

Western has in the past deposited and will continue to deposit all money to which the United States is entitled into the Treasury in accordance with the above statutes. Western has administered the JTS for over 30 years. This administration included the receipt of revenue from outside sources and then redistributing that revenue to other members of the JTS, Basin Electric, Heartland, and MBMPA. Western has also approved the JTS rate prior to implementation.

Western is obligated under existing contracts to administer the transmission facilities of Basin Electric and Heartland. These obligations have arisen based upon the initial signing of the MBSG Agreement which was signed by Reclamation in 1962 and the initial bilateral agreements between Basin Electric and Reclamation which created the JTS. The role Western is playing in the IS is analogous to the role it played in administering the JTS, and Western is contractually obligated to perform those functions.

Comment: UGPR should continue its rights and obligations detailed in the bilateral contracts. In addition it should allow all existing loads to stay on the JTS and receive those benefits.

Response: UGPR agrees and Western, Basin Electric, and Heartland will continue the obligations and benefits among themselves as detailed in the bilateral agreements.

Comment: UGPR should continue to participate in the planning of an Independent System Operator (ISO).

Response: UGPR agrees and has several representatives on the MAPP committees involved with the planning and development of the MAPP ISO. As the proposal is being developed, Western will provide input and data to study the impact on the region and Western. Western will continue its involvement.

Ancillary Services Discussion

Six ancillary services will be offered to IS Transmission Customers; two of which are required to be purchased by IS Transmission Customers. These two are (1) Scheduling, System Control, and Dispatch Service and (2) Reactive Supply and Voltage Control Service from Generation Sources Service. The remaining four ancillary services—Regulation and Frequency Response Service, Energy Imbalance Service, Spinning Reserve Service, and Supplemental Reserve Service will also be offered.

Sales of Regulation and Frequency Response Service, Energy Imbalance Service, Spinning Reserve Service, and Supplemental Reserve Service may be limited since Western has allocated its power resources to preference entities under long-term commitments. If Western is unable to provide these services from its own resources, an offer will be made to purchase the services and pass through these costs to the customer, including an administrative charge.

Scheduling, System Control, and Dispatch Service: Western's annual revenue requirement for Scheduling, System Control, and Dispatch Service is determined by multiplying the portion of the Watertown Operations Office net plant and communications facilities net plant associated with Scheduling, System Control, and Dispatch Service by the transmission fixed charge rate. The formula rate for Scheduling, System Control, and Dispatch Service is the revenue requirement for this service divided by the annual number of daily schedules, or, using 1997 data, $1,684,495 ÷ 36,571 daily schedules. Using 1997 data, this methodology for determining the rate for Scheduling, System Control, and Dispatch Service has produced a rate of $46.06/schedule/day. This rate and rate design is only recovering Western's revenue requirement.

Reactive Supply and Voltage Control from Generation Sources Service: Western's annual cost of providing

Reactive Supply and Voltage Control from Generation Sources Service is determined by multiplying the total P–SMBP–ED generation net plant by the generation fixed charge rate. The annual cost is multiplied by the capability used for reactive support to determine Western's reactive service revenue requirement. Basin Electric's annual revenue requirement is based upon the annual cost of equipment installed on its generators to provide this service. Western's and Basin Electric's annual revenue requirements are summed for the total revenue requirement for this service. The Reactive Supply and Voltage Control Service from Generation Sources Service rate is then derived by dividing the annual revenue requirement by the IS Transmission System Total Load. The annual rate is then divided by 12 months to obtain a monthly rate. Using 1997 data, this methodology for determining the rate for Reactive Supply and Voltage Control Service from Generation Sources Service has produced a rate of $0.07/kW-month for transmission service provided.

Regulation and Frequency Response Service: Regulation and Frequency Response Service in the East side of the control area is provided primarily by Oahe generation, and in the West side of the control area by Fort Peck, both of which are Corps of Engineer facilities. To calculate the annual cost of providing Regulation and Frequency Response Service, the Corps of Engineer's generation fixed charge rate is applied to Oahe generation and Fort Peck generation net plant investment. This cost is divided by the capacity at the plants to derive a dollar per kilowatt amount for Oahe and Fort Peck Powerplants' installed capacity. This dollar per kilowatt amount is then applied to the capacity of Oahe generation and Fort Peck generation reserved for regulation and frequency response in the control area. The capacity reserved for Regulation and Frequency Response Service has been determined to be 2 percent of the annual peak load. The 2 percent value was derived by averaging the incremental change in hourly load in the control area for the calendar year and dividing this amount in half. The annual revenue requirement for Regulation and Frequency Response Service is determined by applying the dollar per kilowatt amount to the capacity used for Regulation and Frequency Response Service. An annual rate for Regulation and Frequency Response Service is then determined by dividing the revenue requirement by the total load in the control area. The annual rate is then divided by 12 months to obtain a monthly rate. Using 1997 data, this methodology for determining the rate for Regulation and Frequency Response Service produced a rate of $0.05/kW-month of load for which Western is providing this service. This rate and rate design is recovering only Western's revenue requirement. Credit will be given to those Transmission Customers who provide Western with Automatic Generation Control (AGC) of generation facilities capable of providing this service.

Energy Imbalance Service: This service is not intended to provide backup for generation supply. Energy shall be returned in like timeframes (on-peak, off-peak, etc.) and accounts zeroed out monthly. Western reserves the right to apply a penalty to energy imbalances outside a 3 percent bandwidth (+/−1.5 percent deviation). The penalty for under deliveries outside the 3 percent bandwidth is 100 mills/kWh. Over deliveries outside the 3 percent bandwidth will be forfeited to the control area.

Reserve Services: Western's annual cost of generation for Reserve Services is determined by multiplying the generation fixed charge rate by the P–SMBP–ED generation net plant investment. The cost/kW-year is determined by dividing the annual cost of generation by the plant capacity. The capacity used for Reserve Services is determined by multiplying Western's peak IS load by the MAPP operating reserve requirement of 5 percent. The cost/kW-year is multiplied by the capacity used for Reserve Services to determine the annual revenue requirement for Reserve Services. The annual revenue requirement for Reserve Services is divided by Western's peak transmission load to calculate the annual rate. The annual rate is then divided by 12 months to obtain a monthly rate. Using 1997 data, this methodology for determining the rate for reserve services has produced a rate of $0.12/kW-month of customer load. This rate and rate design is recovering only Western's revenue requirement associated with Reserve Services. If energy is taken under this service, the energy charge will be the MAPP Rate for Emergency Energy, which is presently the greater of 30 mills/kWh or the prevailing market energy rate in the region.

Ancillary Services Comments

UGPR received written comments concerning the ancillary service rates during the public comment and consultation period. These comments have been paraphrased where appropriate, without compromising the meaning of the comment. Certain comments were duplicative in nature, and were combined. UGPR's response follows each comment.

Comment: The rate for Reactive Supply and Voltage Control from Generation Sources Service is overstated because it includes an excessive amount of generation cost. The revenue requirement should be determined by estimating the cost of the exciter/generator and then allocating that cost between real and reactive power generation. In addition, the load used to derive the rate is understated.

Response: Western estimated the amount of plant costs used to provide Reactive Supply and Voltage Control from Generation Sources Service by multiplying generation investment by the ratio of condensing operation of the generators to total generator operation. When Western's hydro units are condensing, they are removing VARs generated by line charging on the long transmission lines in the IS. Western believes this method is appropriate for allocating costs to Reactive Supply and Voltage Control Service from Generation Sources Service.

The load used in the denominator of the Reactive Supply and Voltage Control Service from Generation Sources Service rate has been changed from the combined East and West control area coincident peaks to the IS Transmission System Total Load to reflect that each unit of transmission service will be charged for this service. Entities that have existing contracts at this time were not included in the denominator because Western cannot charge these entities for this service and including them would cause under recovery of costs. In the future when these contracts expire and these entities take service under the Tariff, their loads will be included in the denominator.

Comment: The Regulation and Frequency Response Service Rate is overstated. The revenue requirement is overstated because Western's estimate of the percentage of generation required to provide regulation service (4 percent) is too high. In addition, the denominator of 1,615 MW is too low. Finally, Western should give credit to Transmission Customers which purchase regulation service from third parties.

Response: The 4 percent value was derived by averaging the incremental change in hourly load in the control area for the year. In accordance with recent FERC rulings related to this service, Western has divided the 4 percent value in half. The denominator

is Western's 12-cp load in its East and West control areas, excluding those entities such as Northwestern Public Service Company, Montana-Dakota Utilities Company, and Montana Power Company that serve load in Western's control areas but have existing transmission agreements and/or provide their own regulation and frequency control service. Including these entities' loads in the denominator at this time would cause under recovery of costs associated with this service. If these entities take this service from Western in the future their loads will be included in the denominator.

Whether Western should provide credit to those preference customers who purchase Regulation and Frequency Response Service from third parties is outside the scope of this process.

Comment: Western's combined percentages for Reserve Services (5 percent) and Regulation and Frequency Response Service (4 percent) are too high. Customers should only have to purchase a total of 5 percent capacity for both Reserve Services and Regulation and Frequency Response Service.

Response: The MAPP operating reserve requirement is 5 percent. Regulation and Frequency Response Service is not included in this percentage and must therefore be provided for in addition to operating reserves. In this **Federal Register** notice Western has decreased the amount of capacity reserved for Regulation and Frequency Response Service from 4 percent to 2 percent.

Comment: Western should adjust the rates for Reactive Supply and Voltage Control from Generation Sources Service and Regulation and Frequency Response Service to recover the costs of the facilities of Basin Electric and Heartland that contribute to the services provided by Western and then provide for appropriate credits.

Response: The cost of Basin Electric's facilities that contribute to Reactive Supply and Voltage Control from Generation Sources Service have been included in that rate, and Basin Electric will receive the appropriate credit for these facilities. If Basin Electric, Heartland, or any other entity provides Western with control of that entity's generation facilities and those generation facilities are capable of providing adequate Reactive Supply and Voltage Control from Generation Sources Service and/or Regulation and Frequency Response Service, that entity will be given an appropriate credit.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) (Act), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the IS Transmission Rate and ancillary service rate adjustment is related to non-regulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the Act. Since the IS Transmission Rates and ancillary service rates are of limited applicability, no flexibility analysis is required.

Environmental Evaluation

In compliance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*; the Council on Environmental Quality Regulations (40 CFR 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Executive Order 12866

DOE has determined this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Submission to Federal Energy Regulatory Commission

The formula rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmation and approval on a final basis.

Order

In view of the foregoing, and pursuant to the authority delegated to me by the Secretary of Energy, I confirm, approve, and place into effect on an interim basis, effective August 1, 1998, formula rates for transmission and ancillary services under Rate Schedules UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, UGP–AS6, UGP–FPT1, UGP–NFPT1, and UGP–NT1. The rate schedules shall remain in effect on an interim basis, pending the FERC confirmation and approval of them or substitute formula rates on a final basis through July 31, 2003.

Dated: July 31, 1998.

Elizabeth A. Moler,

Deputy Secretary.

Rate Schedule UGP–AS1
Schedule 1 to Tariff
August 1, 1998

United States Department of Energy, Western Area Power Administration, Upper Great Plains Region, Integrated System

Scheduling, System Control, and Dispatch Service

Effective

The first day of the first full billing period beginning on or after August 1, 1998, through July 31, 2003.

Applicable

This service is required to schedule the movement of power through, out of, within, or into the Western Area Upper Great Plains control area (WAUGP). The charges for Scheduling, System Control, and Dispatch Service are to be based on the rate referred to below. The formula rate used to calculate the charges for service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The rate will be applied to all schedules for WAUGP non-Transmission Customers. The WAUGP will accept any reasonable number of schedule changes over the course of the day without any additional charge.

The charges for Scheduling, System Control, and Dispatch Service may be modified upon written notice to the customer. Any change to the charges for the Scheduling, System Control, and Dispatch Service shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable Service Agreement.

The Upper Great Plains Region (UGPR) shall charge the non-Transmission Customer in accordance with the rate then in effect.

Formula Rate

$$\text{Rate per Schedule per Day} = \frac{\text{Annual Revenue Requirement for Scheduling, System Control, and Dispatch Service}}{\text{Number of Daily Schedules per Year}}$$

Rate

The rate to be in effect August 1, 1998, through April 30, 1999, is $46.06 per schedule per day. This rate is based on the above formula and on 1997 data. A recalculated rate will go into effect every May 1 based on the above formula and data. UGPR will notify the customer annually of the recalculated rate on or before April 1.

Rate Schedule UGP–AS2

Schedule 2 to Tariff

August 1, 1998

United States Department of Energy, Western Area Power Administration, Upper Great Plains Region, Integrated System

Reactive Supply and Voltage Control From Generation Sources Service

Effective

The first day of the first full billing period beginning on or after August 1, 1998, through July 31, 2003.

Applicable

In order to maintain transmission voltages on all transmission facilities within acceptable limits, generation facilities under the control of the Western Area Upper Great Plains control area (WAUGP) are operated to produce or absorb reactive power. Thus, Reactive Supply and Voltage Control from Generation Sources Service (VAR Support) must be provided for each transaction on the transmission facilities. The amount of VAR Support that must be supplied with respect to the Transmission Customer's transaction will be determined based on the VAR Support necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by WAUGP.

The Transmission Customer must purchase this service from the Transmission Provider. The charges for such service will be based upon the rate referred to below.

The formula rate used to calculate the charges for service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The charges for VAR Support may be modified upon written notice to the Transmission Customer. Any change to the charges for VAR Support shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable Service Agreement. The Upper Great Plains Region (UGPR) shall charge the Transmission Customer in accordance with the rate then in effect.

Those Transmission Customers with generators in the control area providing WAUGP with adequate VAR Support will not be charged for this service. Any waiver of this charge or any crediting arrangements for VAR Support must be documented in the Transmission Customer's Service Agreement.

Formula Rate

$$\text{WAUGP VAR Support Rate} = \frac{\text{Annual Revenue Requirement for VAR Support}}{\text{Load Requiring VAR Support}}$$

Rate

The rate to be in effect August 1, 1998, through April 30, 1999, is:

Monthly: $0.07/kW-month
Weekly: $0.016/kW-week
Daily: $0.002/kW-day
Hourly: 0.096 mills/kWh

This rate is based on the above formula and on 1997 financial and load data. A recalculated rate will go into effect every May 1 based on the above formula and updated financial and load data. UGPR will notify the Transmission Customer annually of the recalculated rate on or before April 1.

Rate Schedule UGP–AS3
Schedule 3 to Tariff
August 1, 1998

United States Department of Energy, Western Area Power Administration, Upper Great Plains Region, Integrated System

Regulation and Frequency Response Service

Effective

The first day of the first full billing period beginning on or after August 1, 1998, through July 31, 2003.

Applicable

Regulation and Frequency Response Service (Regulation) is necessary to provide for the continuous balancing of resources, generation, and interchange, with load and for maintaining scheduled interconnection frequency at 60 cycles per second (60 Hz). Regulation is accomplished by committing on-line generation whose output is raised or lowered, predominantly through the use of automatic generating control equipment, as necessary to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the Western Area Upper Great Plains control area (WAUGP) operator. The Transmission Customer must either purchase this service from WAUGP or make alternative comparable arrangements to satisfy its Regulation obligation. The charges for Regulation are referred to below. The amount of Regulation will be set forth in the Service Agreement.

The formula rate used to calculate the charges for service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

Charges for Regulation may be modified upon written notice to the Transmission Customer. Any change to the Regulation charges shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable Service Agreement. The Upper Great Plains Region (UGPR) shall charge the Transmission Customer in accordance with the rate then in effect.

Transmission Customers will not be charged for this service if they receive Regulation from another source, or self-supply it for their own load. Any waiver of this charge or any crediting arrangement for Regulation must be documented in the Transmission Customer's Service Agreement.

Formula Rate

$$\text{WAUGP Regulation Rate} = \frac{\text{Annual Revenue Requirement for Regulation}}{\text{Load in the Control Area Requiring Regulation}}$$

Rate

The rate to be in effect August 1, 1998, through April 30, 1999, is:

Monthly: $0.05/kW-month
Weekly: $0.012/kW-week
Daily: $0.002/kW-day

This rate is based on the above formula and on 1997 financial and load data. A recalculated rate will go into effect every May 1 based on the above formula and updated financial and load data. UGPR will notify the Transmission Customer annually of the recalculated rate on or before April 1.

If resources are not available from a WAUGP resource, UGPR will offer to purchase the Regulation and pass through the costs to the Transmission Customer, plus an amount for administration.

Rate Schedule UGP-AS4
Schedule 4 to Tariff
August 1, 1998

United States Department of Energy
Western Area Power Administration,
Upper Great Plains Region, Integrated System

Energy Imbalance Service

Effective

The first day of the first full billing period beginning on or after August 1, 1998, through July 31, 2003.

Applicable

Energy Imbalance Service is provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within the Western Area Upper Great Plains control area (WAUGP) over a single hour. The Transmission Customer must either obtain this service from WAUGP or make alternative comparable arrangements to satisfy its Energy Imbalance Service obligation.

The WAUGP shall establish a deviation band of +/−1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s). Deviation accounting will be completed monthly on an hour-to-hour basis.

The formula rate used to calculate the charges for service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The Energy Imbalance Service compensation may be modified upon written notice to the Transmission Customer. Any change to the Transmission Customer compensation for Energy Imbalance Service shall be as set forth in a revision to this schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable Service Agreement. The Upper Great Plains Region (UGPR) shall charge the Transmission Customer in accordance with the rate then in effect.

Formula Rate

UGPR reserves the right to implement the following upon providing notice to the Transmission Customer.

For negative excursions (under deliveries) outside the bandwidth, WAUGP will assess a penalty charge of 100 mills/kWh.

For positive excursions (over deliveries) outside the bandwidth, over deliveries of energy will be forfeited to the control area.

Rate

The bandwidth in effect August 1, 1998, through July 31, 2003, is 3 percent (+/−1.5 percent hourly deviation).

Rate Schedule UGP-AS5
Schedule 5 to Tariff
August 1, 1998

United States Department of Energy
Western Area, Power Administration,
Upper Great Plains Region, Integrated System

Operating Reserve—Spinning Reserve Service

Effective

The first day of the first full billing period beginning on or after August 1, 1998, through July 31, 2003.

Applicable

Spinning Reserve Service (Reserves) is needed to serve load immediately in the event of a system contingency. Reserves may be provided by generating units that are on-line and loaded at less than maximum output. The Transmission Customer must either purchase this service from Western Area Upper Great Plains control area (WAUGP) or make alternative comparable arrangements to satisfy its Reserves obligation. The charges for Reserves are referred to below. The amount of Reserves will be set forth in the Service Agreement.

The formula rate used to calculate the charges for service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The charges for Reserves may be modified upon written notice to the Transmission Customer. Any change to the charges for Reserves shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable Service Agreement. The Upper Great Plains Region (UGPR) shall charge the Transmission Customer in accordance with the rate then in effect.

Formula Rate

$$\text{WAUGP Reserves Rate} = \frac{\text{Annual Revenue Requirement for Reserves}}{\text{Load Requiring Reserves}}$$

Rate

The rate to be in effect August 1, 1998, through April 30, 1999, is:

Monthly: $0.12/kW-month
Weekly: $0.028/kW-week
Daily: $0.004/kW-day

This rate is based on the above formula and on 1997 financial and load data. A recalculated rate will go into effect every May 1 based on the above formula and updated financial and load data. UGPR will notify the Transmission Customer annually of the recalculated rate on or before April 1.

If resources are not available from a WAUGP resource, UGPR will offer to purchase the Reserves and pass through the costs to the Transmission Customer, plus an amount for administration.

In the event that Reserves are called upon for Emergency Use, UGPR will assess a charge for energy used at the Mid-Continent Area Power Pool Rate for Emergency Energy, presently the greater

of 30 mills/kWh or the prevailing market energy rate in the region. The Transmission Customer would be responsible for providing the transmission to get the Reserves to its destination.
Rate Schedule UGP–AS6
Schedule 6 to Tariff
August 1, 1998

United States Department of Energy, Western Area Power Administration Upper Great Plains Region, Integrated System

Operating Reserve—Supplemental Reserve Service

Effective

The first day of the first full billing period beginning on or after August 1, 1998, through July 31, 2003.

Applicable

Supplemental Reserve Service (Reserves) is needed to serve load in the event of a system contingency, however, it is not available immediately to serve load but rather within a short period of time. Reserves may be provided by generating units that are on-line but unloaded, by quick-start generation or by interruptible load. The Transmission Customer must either purchase this service from Western Area Upper Great Plains control area (WAUGP) or make alternative comparable arrangements to satisfy its Reserves obligation. The charges for Reserves are referred to below. The amount of Reserves will be set forth in the Service Agreement.

The formula rate used to calculate the charges for service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The charges for Reserves may be modified upon written notice to the Transmission Customer. Any change to the charges for Reserves shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable Service Agreement. The Upper Great Plains Region (UGPR) shall charge the Transmission Customer in accordance with the rate then in effect.

Formula Rate

$$\text{WAUGP Reserves Rate} = \frac{\text{Annual Revenue Requirement for Reserves}}{\text{Load Requiring Reserves}}$$

Rate

The rate to be in effect August 1, 1998, through April 30, 1999, is:
Monthly: $0.12/kW-month
Weekly: $0.0028/kW-week
Daily: $0.004/kW-day

This rate is based on the above formula and on 1997 financial and load data. A recalculated rate will go into effect every May 1 based on the above formula and updated financial and load data. UGPR will notify the Transmission Customer annually of the recalculated rate on or before April 1.

If resources are not available from a WAUGP resource, UGPR will offer to purchase the Reserves and pass through the costs to the Transmission Customer, plus an amount for administration.

In the event Reserves are called upon for Emergency Energy, the UGPR will assess a charge for energy used at the Mid-Continent Area Power Pool Rate for Emergency Energy, presently the greater of 30 mills/kWh or the prevailing market energy rate in the region. The Transmission Customer would be responsible for providing the transmission to get the Reserves to its destination.
Rate Schedule UGP–FPT1
Schedule 7 to Tariff
August 1, 1998

United States Department Of Energy, Western Area Power Administration, Upper Great Plains Region, Integrated System

Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service

Effective

The first day of the first full billing period beginning on or after August 1, 1998, through July 31, 2003.

Applicable

The Transmission Customer shall compensate the Upper Great Plains Region (UGPR) each month for Reserved Capacity pursuant to the applicable Firm Point-to-Point Transmission Service Agreement and rates referred to below. The formula rates used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

UGPR may modify the rate for Firm Point-to-Point Transmission Service upon written notice to the Transmission Customer. Any change to the rate for Firm Point-to-Point Transmission Service shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable Service Agreement. UGPR shall charge the Transmission Customer in accordance with the rate then in effect.

Discounts

Three principal requirements apply to discounts for transmission service as follows: (1) any offer of a discount made by UGPR must be announced to all eligible Transmission Customers solely by posting on the Open Access Same-Time Information System (OASIS), (2) any Transmission Customer initiated requests for discounts, including requests for use by one's wholesale merchant or an affiliate's use, must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from Point(s) of Receipt to Point(s) of Delivery, UGPR must offer the same discounted transmission service rate for the same time period to all eligible Transmission Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

Formula Rate

$$\text{Firm Point-to-Point Transmission Rate} = \frac{\text{Annual IS Transmission Service Revenue Requirement}}{\text{IS Transmission System Total Load}}$$

Rate

The rate to be in effect August 1, 1998, through April 30, 1999, is as follows.

Maximum of:

Yearly: $34.44/kW of reserved capacity per year

Monthly: $ 2.87/kW of reserved capacity per month

Weekly: $ 0.66/kW of reserved capacity per week

Daily: $ 0.094/kW of reserved capacity per day

This rate is based on the above formula and 1997 data. A recalculated rate will go into effect every May 1 based on the above formula and updated financial and load data. UGPR will notify the Transmission Customer annually of the recalculated rate on or before April 1.

Rate Sched. UGP–NFPT1

Schedule 8 to Tariff

August 1, 1998

United States Department of Energy, Western Power Area Administration, Upper Great Plains Region Integrated System

Non-Firm Point-to-Point Transmission Service

Effective

The first day of the first full billing period beginning on or after August 1, 1998, through July 31, 2003.

Applicable

The Transmission Customer shall compensate Upper Great Plains Region (UGPR) for Non-Firm Point-to-Point Transmission Service pursuant to the applicable Non-Firm Point-to-Point Transmission Service Agreement and rate referred to below. The formula rates used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

UGPR may modify the rate for Non-Firm Point-to-Point Transmission Service upon written notice to the Transmission Customer. Any change to the rate for Non-Firm Point-to-Point Transmission Service shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable Service Agreement. UGPR shall charge the Transmission Customer in accordance with the rate then in effect.

Discounts

Three principal requirements apply to discounts for transmission service as follows: (1) any offer of a discount made by UGPR must be announced to all eligible Transmission Customers solely by posting on the Open Access Same-Time Information System (OASIS), (2) any Transmission Customer initiated requests for discounts, including requests for use by one's wholesale merchant or an affiliate's use, must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from Point(s) of Receipt to Point(s) of Delivery, UGPR must offer the same discounted transmission service rate for the same time period to all eligible Transmission Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

Formula Rate

$$\text{Maximum Point-to-Point Transmission Rate} = \text{Firm Point-to-Point Transmission Rate}$$

Rate

The rate to be in effect August 1, 1998, through April 30, 1999, is:

Maximum of:

Monthly: $2.87/kW of reserved capacity per month

Weekly: $0.66/kW of reserved capacity per week

Daily: $0.094/kW of reserved capacity per day

Hourly: 3.93 mills/kWh

This rate is based on the above formula and 1997 data. A recalculated rate will go into effect every May 1 based on the above formula and updated financial and load data. UGPR will notify the Transmission Customer annually of the recalculated rate on or before April 1.

Rate Schedule UGP–NT1

Attachment H to Tariff

August 1, 1998

United States Department of Energy, Western Area Power Administration Upper Great Plains Region, Integrated System

Annual Transmission Revenue Requirement for Network Integration Transmission Service

Effective

The first day of the first full billing period beginning on or after August 1, 1998, through July 31, 2003.

Applicable

The Transmission Customer shall compensate the Upper Great Plains Region (UGPR) each month for Network Transmission Service pursuant to the applicable Network Integration Service Agreement and annual revenue requirement referred to below. The formula for the annual revenue requirement used to calculate the charges for this service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

UGPR may modify the charges for Network Integration Transmission Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Network Integration Transmission Service shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable Service Agreement. UGPR shall charge the Transmission Customer in accordance with the revenue requirement then in effect.

Formula Rate

$$\text{Monthly Charge} = \frac{(\text{Transmission Customer's Load-Ratio Share} \times \text{Annual Revenue Requirement for IS Transmission Service})}{12 \text{ months}}$$

Annual Revenue Requirement

The annual revenue requirement in effect August 1, 1998, through April 30, 1999, is $95,725,420. This annual revenue requirement is based on 1997 data. A recalculated annual revenue requirement will go into effect every May 1 based on updated financial data. UGPR will notify the Transmission Customer annually of the recalculated annual revenue requirement on or before April 1.

[FR Doc. 98–21600 Filed 8–11–98; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6143–1]

Science Advisory Board; Closed Meeting Notice

An *ad hoc* Subcommittee of the Science Advisory Board will meet at the U.S. Environmental Protection Agency (EPA), Washington, D.C., on August 27–28, 1998. Pursuant to Section 10(d) of the Federal Advisory Committee Act (FACA) and 5 U.S.C. 552(b)(c)(2) and 552(b)(c)(6), EPA has determined that the meeting will be closed to the public. The purpose of the meeting is to recommend to the Assistant Administrator of the Office of Research and Development (ORD) the recipients of the Agency's 1997 Scientific and Technological Achievement Cash Awards. These awards are established to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, as exhibited in publication of their results in peer reviewed journals. In making these recommendations, including the actual cash amount of each award, the Agency requires full and frank advice from the Science Advisory Board. This advice will involve professional judgments on the relative merits of various employees and their respective work. Such personnel issues, where disclosure would constitute an unwarranted invasion of personal privacy, are protected from disclosure by exemptions 2 and 6 of Section 552(b)(c) of the U.S.C. In accordance with the provisions of the Federal Advisory Committee Act, minutes of the meeting will be kept for Agency and Congressional review. For more information, contact Mr. Robert Flaak, Team Leader, Committee Operations Staff, Science Advisory Board (1400), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, via telephone: (202) 260–5133 or via E-mail: flaak.robert@epa.gov

Dated: August 6, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–21671 Filed 8–11–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6143–9]

Science Advisory Board; Executive Committee; Notification of Public Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notification is hereby given that the Science Advisory Board's (SAB) Executive Committee, will conduct a public teleconference meeting on Thursday, August 27, 1998, between the hours of 2 pm and 3 pm. All times noted are Eastern Time. The meeting is open to the public, however, due to limited space, seating will be on a first-come basis.

The meeting will be coordinated through a conference call connection in Conference Room 1 North, Waterside Mall (street level), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The public is welcome to attend the meeting physically or through a telephonic link. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Priscilla Tillery-Gadson at (202) 260–4126 by August 21, 1998.

In this meeting the Executive Committee plans to review drafts from several of its Committees. These anticipated drafts include:

(a) Environmental Health Committee's Review of 1,3 Butadiene Risk Assessment.

(b) Research Strategies Advisory Committee's Review of the ORD Budget Presentation Process.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting or wishing to submit comments should contact Dr. Donald G. Barnes, Designated Federal Officer for the Executive Committee, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; telephone (202) 260–4126; FAX (202) 260–9232; and via E-Mail at: barnes.don@epa.gov. Copies of the relevant documents are available from the same source. Draft documents will also be available on the SAB Website (http://www.epa.gov/sab) at least one week prior to the meeting.

Dated: August 7, 1998.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 98–21702 Filed 8–11–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34130; FRL–6024–3]

Increasing Transparency for the Tolerance Reassessment Process; Availability of Preliminary Risk Assessments for Nine Organophosphates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces the availability of documents which were developed as part of EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the preliminary risk assessments and related documents for azinphos-methyl, bensulide, ethion, fenamiphos, isofenphos, naled, phorate, profenofos, and terbufos. This Notice also starts a 60–day public comment period for the preliminary risk assessments. Comments are to be limited to issues directly associated with the nine organophosphates that have risk assessments placed in the docket and should be limited to issues raised in those documents. EPA will provide opportunity for comment on the hazard assessments and FQPA safety factor assessments for the other organophosphates at a later date. Opportunity for public comment will also be provided at a later date for a variety of science issues. Allowing access and comments on the preliminary risk assessments will strengthen stakeholder involvement and help ensure the Agency's decisions under FQPA are transparent, and based on the best available information. The tolerance reassessment process will ensure that the U.S. continues to have the safest and most abundant food supply. The Agency cautions that these risk assessments are preliminary assessments only and that further

refinements of the risk assessments will be appropriate for some, if not all, of these nine pesticides. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

DATES: Written comments on these assessments must be submitted by October 13, 1998.

ADDRESSES: By mail, submit written comments in triplicte to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit II. of this document. 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. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

To request a copy of any of the above listed preliminary risk assessments and related documents, contact the OPP Pesticide Docket, Public Information and Records Integrity Branch, in Rm. 119 at the address given above or call (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Station #1, 3rd Floor, 2800 Crystal Drive, Arlington, VA; (703) 308–8004; e-mail: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is making available preliminary risk assessments which have been developed as part of EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act as amended by the Food Quality Protection Act of 1996 (FQPA). The Agency's preliminary health effects risk assessments for the following nine organophosphate pesticides are available in the individual pesticide dockets: azinphos-methyl, bensulide, ethion, fenamiphos, isofenphos, naled, phorate, profenofos, and terbufos. In addition, the preliminary ecological effects risk assessments for bensulide, ethion, fenamiphos, isofenphos, naled, phorate, profenofos, and terbufos have also been docketed. The Hazard Assessment of the Organophosphates and FQPA Safety Factor Recommendations for the Organophosphates have also been included in the docket to help the public in their review of the preliminary risk assessments.

Included in the individual pesticide dockets are the Agency's preliminary risk assessments, the registrants' comments to this point, and any successive Agency reviews or related correspondence regarding the Agency's risk assessment. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for the above nine organophosphate pesticides. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments will be appropriate for some, if not all, of these nine pesticides. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

As the preliminary risk assessments for the remaining organophosphate pesticides are completed and registrants are given a 30–day review period to identify possible computational or other clear errors in the risk assessment, these risk assessments and registrant responses will be placed in the individual pesticide dockets. A Notice of Availability for subsequent assessments will appear in the **Federal Register**.

To provide users with the most recent information on the nine organophosphates, EPA has also included in each docket the Agency's July 7, 1998 "Hazard Assessment of the Organophosphates" and the Agency's August 6, 1998 "FQPA Safety Factor Recommendations for the Organophosphates." In general, these two documents were completed after the nine individual pesticide preliminary risk assessments discussed above. The Agency notes that where the preliminary risk assessments are inconsistent with the Hazard Assessment and FQPA Safety Factor Recommendation these latter assessments will supersede the relevant portions of the preliminary risk assessments and will be incorporated into the revised individual pesticide risk assessments. The Agency also notes that these documents reflect only the work and analysis conducted as of the time they were produced, and as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

The Agency is providing an opportunity, through this Notice, for interested parties to provide written comments and input to the Agency on the preliminary risk assessments for the chemicals specified in this Notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as percent crop treated information or submission of residue data from food processing studies, or could address the Agency's risk assessment methodologies and assumptions as applied to these specific chemicals. Comments should be limited to issues raised within the preliminary risk assessments and associated documents. EPA will provide other opportunities for public comment on other science issues associated with the organophosphate tolerance reassessment program. Failure to comment on any such issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by October 13, 1998 at the address given above. Comments will become part of the Agency record for each individual pesticide to which they pertain.

II. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established for this action under the following docket control numbers. When submitting written or electronic comments regarding the nine

organophosphates, use the following docket control numbers:

azinphos-methyl	OPP–34131
bensulide	OPP–34132
ethion	OPP–34133
fenamiphos	OPP–34134
isofenphos	OPP–34135
naled	OPP–34136
phorate	OPP–34137
profenofos	OPP–34138
terbufos	OPP–34139

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 record is located at the Virginia 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 appropriate docket control number. Electronic comments on this document may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: August 6, 1998.

Jack E. Housenger,

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

[FR Doc. 98–21679 Filed 8–11–98; 8:45 am]
BILLING CODE CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30457; FRL–6020–4]

Dominion BioSciences, Inc.; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients 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 September 11, 1998.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30457] and the file symbols to: Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, 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 notice 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 may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Judy Loranger, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 902W-40, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703 308–8056, e-mail: loranger.judy@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients 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.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 71144–E. Applicant: Dominion BioSciences, Inc., Suite 1600, 1872 Pratt Drive, Blacksburg, VA 24060. Product Name: Xanthine and Oxypurinol Manufacturing Use Concentrate. Insecticide. Active ingredient: Oxypurinol 50% and Xanthine 50%. Proposed classification/Use: None. For manufacture of insecticide baits for commercial and/or domestic indoor use.

2. File Symbol: 71144–R. Applicant: Dominion BioSciences, Inc. Product Name: Ecologix Cockroach Bait. Insecticide. Active ingredient: Oxypurinol 1% and Xanthine 1%. Proposed classification/Use: None. For use in commercial, industrial, and residential areas.

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.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30457] (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 number [OPP–30457]. Electronic comments on this notice may

be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: July 24, 1998.

Phil Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–21205 Filed 8–11–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[FCC 98–187]

Inquiry Concerning Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: On August 7, 1998, the Federal Communications Commission (FCC) released a Notice of Inquiry to solicit comment about the availability of advanced telecommunications capability to all Americans. The Notice seeks comment from businesses, consumers, public interest groups, and others on what the statutory meaning of "advanced telecommunications capability" should include. In addition, the Notice seeks comment on the current and future availability of advanced telecommunications capability and the likelihood that it will be deployed to all Americans. Finally, the Notice seeks comment on what action the FCC should take if it finds that advanced telecommunications capability is not being deployed to all Americans in a reasonable and timely fashion.

DATES: Comments are due on or before September 8, 1998. Reply comments are due on or before October 8, 1998.

ADDRESSES: Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Suite 222, Washington, D.C. 20554, with a copy to John W. Berresford of the Common Carrier Bureau, Federal Communications Commission, 2033 M Street, N.W., Suite 399-A, Washington, D.C. 20054. Comments may also be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Parties should also file one copy of any document filed in this docket with the Commission's copy contractor, International Transcription Services, Inc. (ITS), 1231 20th St., N.W., Washington, D.C. 20036, (202) 857–3800.

FOR FURTHER INFORMATION CONTACT: John W. Berresford, Senior Antitrust Attorney, Industry Analysis Division, Common Carrier Bureau, at 202–418–1886 or jberresf@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Notice of Inquiry released August 7, 1998 (FCC 98–187). The full text of the Notice of Inquiry 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. 20554. The complete text is also available on the Commission's website at http://www.fcc.gov. The complete text also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS), 1231 20th St., N.W., Washington, D.C. 20036, (202) 857–3800.

Summary of the Public Notice

1. In the Notice of Inquiry (Notice), the Commission solicits public comment on what should be included in the term "advanced telecommunications capability" and to what degree that capability is being deployed or will be deployed to all Americans. The Commission seeks to determine whether the free market is delivering or will deliver this capability to all Americans and, if not, what the Commission should do to accelerate it.

2. Section 706 of the Telecommunications Act of 1996, specifically directs the Commission and each state commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment." Public Law 104–104, Title VII, § 706, Feb. 8, 1996, 110 Stat. 153, reproduced in the notes under 47 U.S.C. 157. Pursuant to this Congressional directive, the Notice seeks public comment from a broad range of parties to help inform the Commission on what it may do to fulfill its statutory obligation.

3. In particular, the Commission seeks comment in the Notice on the meaning and scope of statutory terms such as "advanced telecommunications capability," "broadband," and "high-speed." Additionally, the Commission seeks comment on whether it was the intent of Congress to have the meaning of these terms evolve over time.

4. The Commission further seeks comment about a variety of businesses and the role they can play in deploying advanced telecommunications capability. To this end, the Notice seeks comment on the potential for deployment from sources such as incumbent and competitive local exchange carriers (LECs) and interexchange carriers, as well as information service providers, satellites, broadcasters, mobile service companies, utilities, and high-bandwidth wireless providers. In addition to deployment plans, the Notice seeks comment on the potential for new alternatives to the incumbent LECs' and cable television companies' last miles and last hundred feet of wired connections, especially to residential and small business customers. The Commission also seeks comment from consumers, public interest groups, and other persons on these matters.

5. Consistent with section 706(a), the Commission seeks comment on what regulatory barriers exist that are delaying any of the above-mentioned industries from proceeding forward with deployment and what action the Commission should take to remove those barriers.

6. In addition, the Commission encourages all interested parties to comment on the demand for advanced telecommunications capability. In particular, the Notice seeks comment on whether consumer demand is homogeneous, and if not, whether it will vary by region, income or other variables. The Notice also seeks to ascertain the cost of delivering advanced telecommunications capability and what effects price has on both the supply of and demand for the services that result from deployment.

7. Section 706(b) directs the Commission to pay attention in particular to the availability of advanced telecommunications capability to "elementary and secondary schools and classrooms." The Notice seeks comment on whether the market will adequately serve the needs of schools and classrooms as well as libraries, and if not, to what extent any shortage in service will be addressed by other

government programs designed to address their needs.

8. The Notice seeks comment on the current trends in deployment and whether they indicate that certain segments of the population may be underserved by the market. The Notice also notes that in rural and inner-city communities, the market may fail to deliver advanced telecommunications capability. The Notice seeks comment on whether advanced telecommunications capability is or will be deployed in these areas.

9. Congress directs the Commission in section 706(b) to exercise its regulatory authority to remove barriers to infrastructure investments if it finds that deployment is not occuring "in a reasonable and timely fashion." The Notice seeks comment on how the Commission should do so. The Notice specifically seeks comment on how the Commission should exercise its forbearance authority and which statutory provisions or rules it should forbear from applying.

10. The Notice also seeks comment on the appropriate balance between section 706 and the policy and program for universal service under 47 U.S.C. § 254.

11. The Commission seeks comment on what structure of regulation will best promote the deployment of advanced telecommunications capability and will preserve a competitive market for advanced services. This question may become important if competition in advanced services emerges among common carriers (wire and wireless), cable television, broadcasters, and information service providers.

12. Section 706 calls on the State commissions to encourage deployment of advanced telecommunications capability. The Commission seeks comments from the states on how it can best interact with them to ensure that the goals of section 706 are achieved.

Procedural Matters

A. Ex Parte Presentations

13. Subject to the provisions of 47 CFR § 1.1203 concerning "Sunshine Period" prohibitions, this proceeding is exempt from ex parte restraints and disclosure requirements, pursuant to 47 CFR § 1.1204(b)(1). Because many of the matters on which we request comment in the Notice may call on parties to disclose proprietary information, we suggest that parties consult 47 CFR § 0.459 about the submission of confidential information.

B. Comment Filing Procedures

14. Pursuant to §§ 1.415, 1.419, and 1.430 of the Commission's rules, 47 CFR 1.415, 1.419, and 1.430, interested parties may file comments on or before September 8, 1998. Reply comments are due on or before October 8, 1998. To file formally in the proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and twelve copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Suite 222, Washington, D.C. 20554, with a copy to John W. Berresford of the Common Carrier Bureau, Federal Communications Commission, 2033 M Street, N.W., Suite 399, Washington, D.C. 20036. Parties should also file one copy of any document filed in this docket with the Commission's copy contractor, International Transcription Services, Inc. (ITS), 1231 20th St., N.W., Washington, D.C. 20036, (202) 857–3800.

15. Comments may also be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of electronically filed comments must be submitted. Commenters must note on the subject line whether an electronic submission is an exact copy of formal comments. Commenters also must include their full name and U.S. Postal Service mailing address in their submission. Further information on the process of submitting comments electronically is available at <http://www.fcc.gov/e-file>.

16. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal requirements addressed above. Parties submitting diskettes should submit them to: Ms. Terry Conway, Common Carrier Bureau, Industry Analysis Division, 2033 M Street, N.W., Room 500, Washington, D.C. 20554. Such diskettes should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows software. The diskette should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding, type of pleading (comment or reply comment), and date of submission. The diskette should be accompanied by a cover letter.

16. *Other requirements.* Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. We also direct all interested parties to include the name of the filing party and the date of the on each page of their comments and reply comments.

Ordering Clause

17. Accordingly, it is ordered, pursuant to section 706 of the Telecommunications Act of 1996, that notice is hereby given of the inquiry described above and that comment is sought on these issues.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–21729 Filed 8–11–98; 8:45 am]

BILLING CODE 6712–01–P

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.

CrossBar, Inc., 2012 E. Phelps, Suite A1, Springfield, MO 65802, Officer: Ray Walker Crossland, President

Washington World Trading Corp. d/b/a Washington World International Freight Forwarders, 1280 Golfview Drive East, Pembroke Pines, FL 33026, Officers: Lucia Novoa, President, Lauro W. Novoa, Exec. Vice President

Sari Express, Inc., 8282 NW 66th Street, Miami, FL 33166, Officers: Ruggeiro Suppa, President, Elena Martinez, Vice President

Woojin Shipping, Inc. d/b/a Axon Int'l, 960 Rand Road, #228, Des Plaines, IL 60016, Officer: Young H. Kim, President

Dynamic Network Team, Inc. d/b/a DNT Container Line, 150–40 183rd Street, Rm. 117, Jamaica, NY 11413, Officers: Wendy Wei, President, David Wei, General Manager

Highland Forwarding, Inc., 3 Highlander Way, Suite #315, Manchester, NH 03103, Officers: Radek Maly, President, Edward Kaplan, Treasurer

Tradewinds USA, Inc., 4027 S. Wells Street, Chicago, IL 60609, Officers: Cynthia Ramirez-Berry, President, Steven Cohen, Secretary/Treasurer

N.I. Logistics American Corporation, 1211 Avenue of the Americas, New York, NY 10036, Officer: Hidetsugu Akagi, President

Dated: August 7, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–21615 Filed 8–11–98; 8:45 am]

BILLING CODE 6730–01–M

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 September 8, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. First National Bancshares, Inc., Bradenton, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Manatee, Bradenton, Florida.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Associated Banc-Corp, Green Bay, Wisconsin; to acquire 100 percent of the voting shares of Associated Bank Illinois, N.A., Rockford, Illinois (in organization).

2. Holland Financial Corporation, Holland, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Holland, Holland, Michigan (in organization).

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Eggemeyer Advisory Corp., Castle Creek Capital, LLC, and Castle Creek Capital Partners Fund-I, LP, all of Rancho Santa Fe, California; to acquire more than 5 percent of the voting shares of Continental National Bancshares, Inc., El Paso, Texas, and thereby indirectly acquire Continental National Bank, El Paso, Texas.

2. State National Bancshares, Inc., Lubbock, Texas; to acquire 100 percent of the voting shares of Continental National Bancshares, Inc., El Paso, Texas, and thereby indirectly acquire Continental National Bank, El Paso, Texas.

Board of Governors of the Federal Reserve System, August 7, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–21632 Filed 8–11–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 982–3050]

Allied Domecq Spirits & Wine Americas, Inc. et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 13, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lee Peeler, FTC/S–4002, Washington, DC 20580. (202) 326–3090.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Pracitce (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 6, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627, Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Allied Domecq Spirits & Wine Americas, Inc. and Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker, Delaware and Michigan corporations, respectively (hereinafter collectively referred to as Allied).

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint in this matter concerns two nearly identical television advertisements for Allied's Kahlua White Russian pre-mixed

cocktail. According to the complaint, these ads falsely represented that the product was a "LOW ALCOHOL BEVERAGE." Allied has ceased making this representation.

Paragraph seven of the complaint sets out several reasons why the Kahlua White Russian pre-mixed cocktail should not be represented as a low alcohol beverage. It has significant alcohol content, 11.8 proof (5.9% alcohol by volume), equal to or greater than numerous other alcohol beverages. For example, a Kahlua White Russian has substantially more alcohol ounce for ounce than many beers, malt liquors and wine coolers. For some people, drinking as few as two or three Kahlua White Russians will begin to impair normal functions, such as driving. It is also pertinent that the Bureau of Alcohol, Tobacco and Firearms has limited use of the term "low alcohol," for the purposes of beer and malt liquor, to products with less than 2.5% alcohol by volume. The alcohol content of a Kahlua White Russian is substantially higher, with 5.9% alcohol by volume. Accordingly, the complaint alleges that the low alcohol beverage representation was false or misleading.

The consent order contains provisions designed to remedy the violations charged and to prevent Allied from engaging in similar acts in the future. Part I of the order prohibits any representation that any beverage alcohol product containing 5.9% alcohol by volume is a low alcohol beverage, as well as any misrepresentation, through numerical or descriptive terms, or any other means, of the amount of alcohol contained in any beverage alcohol product. Part I of the order does not prohibit Allied from making any representation about the amount of alcohol contained in any beverage alcohol product that is specifically required in advertising by the Bureau of Alcohol, Tobacco and Firearms. Part I of the order also does not prohibit Allied from making non-misleading claims presenting clear and accurate comparisons of the alcohol content of Kahlua White Russians and any other specified beverage alcohol product. Indeed, Commission policy encourages truthful comparative advertising as an important means of informing consumers about the relative merits of competing products. *See*, In Regard to Comparative Advertising, 15 CFR 14.15 (favoring comparative advertising generally); Guides for the Use of Environmental Marketing Claims, 16 CFR 260.6(d) (guidance on comparative environmental claims); Enforcement Policy Statement on Food Advertising, p. 10 (1994) (guidance on comparative nutrient content claims).

The remaining parts of the order contain record keeping (Part II); order distribution (Part III); notification of corporate change (Part IV); compliance report filing (Part V) and sunset (VI) provisions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 98–21611 Filed 8–11–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 982–3092]

Beck's North America, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practice or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 13, 1998.

ADDRESSES: Comments should be direced to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Lee Peeler, FTC/S–4002, Washington, D.C. 20580. (202) 326–3090.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 6, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Beck's North America, Inc. ("BNAI"), a Delaware corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint in this matter concerns two television advertisements for Beck's Beer that depict young adults drinking alcohol on a sailing ship, while engaging in activities that allegedly pose a substantial risk of injury. BNAI has ceased disseminating the ads that are the subject of the complaint.

The challenged advertisements depict young adults partying and drinking beer on a schooner at sea. On the deck of the boat is a large bucket of ice, filled with bottles of Beck's Beer. Almost all of the passengers are holding bottles of beer, with one male passenger with a bottle of beer in hand standing precariously on the bowsprit (a spar extending almost horizontally off the bow of the boat), and others sitting or leaning on the edge of the bow, where there is no railing.

Because of the significant risks of drinking while boating, the U.S. Coast Guard has recently initiated a public education campaign designed to encourage boat operators and passengers to "boat safe and sober." In this case, the challenged ads depict individuals combining drinking with activities—bowriding and standing on a bowsprit—that could constitute negligent boat operation under federal and state

boating safety statutes. In addition, the advertising is inconsistent with the provisions of the Beer Institute Advertising and Marketing Code, which provides that "[b]eer advertising . . . should not portray or imply illegal activity of any kind," and "[b]eer advertising . . . should not associate or portray beer drinking before or during activities which require a high degree of alertness or coordination."

Paragraph five of the complaint describes the challenged advertisements as depicting individuals drinking Beck's beer while engaging in acts that require a high degree of alertness and coordination to avoid falling overboard. This conduct is inconsistent with the Beer Institute's own Advertising and Marketing Code and may also violate federal and state boating safety laws. It alleges that the risks associated with such activities while boating are greatly increased by consumption of alcohol. It notes that even low and moderate blood alcohol levels sufficiently affect coordination and balance to place passengers at increased risk of falling overboard and drowning, and that many persons are unaware of this increased risk. This paragraph also notes that as many as one-half of all boating fatalities are alcohol-related, including an average of 60 recreational boat fatalities annually from falling overboard while drinking. Accordingly, respondent's depiction of this activity in its advertisements is likely to cause substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. As a result, the complaint alleges that respondent's practice was an unfair act or practice.

The Commission has substantial concern about advertising that depicts conduct that poses a high risk to health and safety. As a result, the Commission will closely scrutinize such advertisements in the future.

The consent order contains provisions designed to remedy the violations charged. Part I of the order prohibits respondent from future dissemination of the television advertisements attached to the complaint as Exhibits A and B, or of any other advertisement that a) depicts a person having consumed or consuming alcohol on a boat while engaging in activities that pose a substantial risk of serious injury from falling overboard or b) depicts activities that would violate 46 U.S.C. 2302(c). The cited statute, 46 U.S.C. 2302(c), makes it illegal to operate a vessel under the influence of alcohol or illegal drugs.

The remaining parts of the order contain standard record keeping (Part II); order distribution (Part III); notification of corporate change (Part IV); compliance report filing (Part V) and sunset (Part VI) provisions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

Statement of Commissioner Mozelle W. Thompson

Today, the Commission voted to accept a consent agreement with Beck's North America, Inc. ("Beck's") in File Number 982–3092 on grounds that Beck's disseminated or caused to be disseminated unfair television advertisements. I joined in that vote. I also believe, however, that the advertisements at issue were deceptive. The Commission has defined deceptive advertising as "that which contains a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment." [1] In my view, the Beck's television advertisements if this definition.

First, I believe the advertisements imply to reasonable targeted consumers that consuming alcohol while boating is appropriate and/or safe. In fact, the actors begin one advertisement by stating "Wanna have some fun? Mix hot music, cool people, [a] big boat and a great German beer." Unfortunately, the advertisement does not disclose that consuming alcohol while boating poses a heightened danger not only to the boat operator, but also to passengers. It also fails to disclose that such behavior may violate applicable Federal boating laws.[2] Second, as evidenced by the actors and the language portrayed in the advertisement, I believe that the message is targeted at a youthful audience. Accordingly, it can be justifiably inferred that a reasonable youthful consumer could easily be deceived by not appreciating the danger of imitating the behavior featured in the television advertisements.

For these reasons, I would find that the Beck's advertisements were deceptive as well as unfair under Section 5 of the FTC Act.

[1] *See Cliffdale Associates, Inc.*, 103 F.T.C. 110, 176 (1984) *Appeal dismissed sub nom., Kovan v. FTC*, No. 84–5337 (11th Cir. Oct. 10, 1984) (*Deception Statement*).

[2] This problem has become so serious that the U.S. Coast Guard has recently launched a new campaign to better inform the public of the dangers of mixing boating and alcohol.

[FR Doc. 98–21612 Filed 8–11–98; 8:45 am]
BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 971–0065]

Fair Allocation System, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 13, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William Baer, FTC/H–374, Washington, D.C. 20580, (202) 326–2932; or Charles Harwood, Federal Trade Commission, Seattle Regional Office, 915 Second Avenue, Suite 2896, Seattle, WA 98174, (206) 220–4480.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 5, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered

by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted a proposed consent order from Fair Allocation System, Incorporated ("FAS"). FAS is an organization of twenty-five automobile dealerships from five Northwest states that was formed to address dealer concerns over the marketing practices of automobile manufacturers. In particular, FAS members were concerned about an automobile dealership—Dave Smith Motors of Kellogg, Idaho—which was attracting customers from around the Northwest and taking substantial sales from FAS members by selling cars for low prices and marketing them on the Internet.

According to the complaint, because of these concerns, the members of FAS collectively attempted to force Chrysler to change its vehicle allocation system. Chrysler allocates vehicles based on the dealer's total sales; FAS members wanted Chrysler to allocate vehicles based on the expected number of sales from a dealer's local area, which would have substantially reduced the number of cars available to a dealership like Dave Smith Motors that drew customers from a wider geographic area. According to the complaint, the members of FAS threatened to refuse to sell certain Chrysler vehicles and to limit the warranty service they would provide to particular customers unless Chrysler changed its allocation system so as to disadvantage dealers that sold large quantities of vehicles outside of their local geographic areas.

The compliant charges that FAS's agreements or attempts to agree with its dealer members to coerce Chrysler violate Section 5 of the FTC Act, as amended, 15 U.S.C. 45. According to the complaint, FAS members constitute a substantial percentage of the Chrysler, Plymouth, Dodge, Jeep and Eagle dealerships in eastern Washington, Idaho, and western Montana, and FAS's threats would have harmed competition and consumers in those areas. In particular, FAS's efforts would have deprived consumers of local access to certain Chrysler models and to warranty service, and would have reduced competition among automobile dealerships, including rivalry based on price or via the Internet.

The goal of the boycott was to limit the sales of a car dealer that sells cars at low prices and via a new and innovative channel—the Internet. FAS's threatened action against Chrysler is a *per se* illegal group boycott. In *United States* v. *General Motors*, 384 U.S. 127 (1966), the Supreme Court held *per se* illegal a comparable dealer cartel in Los Angeles that sought to prevent other area dealers from selling automobiles through discount brokers. Since General Motors, the Supreme Court has twice cited its *per se* condemnation of dealer cartels with approval. *See Continental T.V., Inc.* v. *GTE Sylvania Inc.*, 433 U.S. 36, 58 n. 28(1977); *Business Electronics* v. *Sharp Electronics*, 485 U.S. 717, 734 n. 5 (1988). Such dealer cartels are "characteristically likely to result in predominantly anticompetitive effects," *Northwest Wholesale Stationers* v. *Pacific Stationery & Printing Co.*, 472 U.S. 284, 295 (1985), because they aim to limit competition while producing no plausible efficiencies.

Even where an agreement otherwise appears to fall in a category traditionally analyzed under a *per se* rule, a more extensive, rule-of-reason analysis may be necessary if there are plausible efficiency justifications for the conduct. *Broadcast Music, Inc.* v. *Columbia Broadcasting System, Inc.*, 441 U.S. 1 (1979). Here, however, there appear to be no plausible efficiencies that would justify the dealers' conduct. Even if there were reason to believe that Dave Smith Motors, or similarly operated dealerships, were free-riding [1] on the efforts of more traditional dealers, no boycott would be needed to deal with the problem. Manufacturers have strong incentives to prevent free-riding by a few of their dealers at the expense of the rest, and can be expected to be responsive to complaints from their dealers acting individually if the free-riding concerns are genuine. In the absence of an efficiency justification that plausibly explains why concerted action is necessary, extensive searches for and investigations of justifications for such conduct would be unwarranted, and would only add a layer of complication and delay.

In this case, the absence of a justification is especially clear. Chrysler has previously rejected demands that it change its allocation system and publicly lauded Dave Smith Mothers. *See* "Chrysler Corp. Will Let Dealers Shoot It Out in Cyberspace," Automotive News, p. 1, January 27, 1997. Indeed, Chrysler's Vice President of Sales and Marketing has flatly stated that Chrysler believes the best way to increase its sales penetration is to provide dealers as much product as they can sell, no matter where the customer comes from. *See* "Chrysler VP Has Calming Effect," Automotive News, p. 28, February 10, 1997. Even if Chrysler had acceded to the boycotters' demands, however, that would not have justified a horizontal boycott by the dealers.

The proposed consent order would prohibit FAS from participating in, facilitating, or threatening any boycott of or concerted refusal to deal with any automobile manufacturer or consumer. There is nothing in the proposed order, however, that would prohibit FAS from informing automobile manufacturers about the views and opinions of FAS members.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement containing the proposed consent order to modify in any way its terms.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 98–21613 Filed 8–11–98; 8:45 am]

BILLING CODE 6750–01–M

[1] "Free-rider" concerns may arise where two distributors sell the same product, but provide different levels of service in connection with the sale of that product. For example, one distributor may have a full-service showroom and the other may sell out of a warehouse that offers no service. Consumers may visit the showroom, learn all they need to know about the product, and then purchase the produce from a "no-service" discounter. The problem is that over time the full-service distributor may lose its incentive or financial ability to provide the services, to the detriment of both the manufacturer and the consumers who value those services. Free-rider concerns generally do not exist if the full-service distributor is compensated for its services.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Benjamin S. Pender, Medical University of South Carolina: Based upon a report from the Medical University of South Carolina (MUSC), information obtained by the Office of Research Integrity (ORI) during its oversight review, and Mr. Pender's own admission, ORI found that Mr. Pender, former graduate student, Medical Science Training Program, MUSC, engaged in scientific misconduct in biomedical research supported by a grant from the National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH). Mr. Pender cooperated with MUSC's investigation.

Specifically, Mr. Pender presented to the MUSC Shock Research Group (1) a blank autoradiographic film, which he represented to be a Northern blot, as evidence that he had conducted an experiment that he had not done, and (2) a photographic slide representing a Western blot analysis that he had falsified by using a computer to duplicate two sets of bands to misrepresent oligonucleotide treatments at different times and by misrepresenting the identities of two bands in one of the sets. Also, Mr. Pender falsified data from experiments with thromboxane B_2 and tumor necrosis factor alpha that were published and distributed in an abstract entitled "Antisense Oligonucleotide to G Protein Inhibits Endotoxin Stimulated Thromboxane (Tx) B2 production" (*Supplement* to *Shock* 7:20, 1997). This data also was reported as Figure 4 of a submitted but unpublished and withdrawn manuscript and in the Progress Report for an NIH grant.

Mr. Pender has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which he has voluntarily agreed, for the three (3) year period beginning July 31, 1998:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 CFR part 76 (Debarment Regulations); and

(2) To exclude himself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

No scientific publications were required to be corrected as part of this Agreement. The abstract was withdrawn before presentation.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 98–21589 Filed 8–11–98; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–25]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice. Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Projects

1. A National Registry for Surveillance of Non-Occupational Exposures to Human Immunodeficiency Virus and Post-Exposure Antiretroviral Therapy—New—The National Center for HIV, STD, and TB Prevention, Division of HIV/AIDS Prevention, Surveillance, and Epidemiology proposes to develop and implement a surveillance registry in the United States which will provide data for analysis and technical reports on the frequency and types of nonoccupational exposures to HIV, offers and acceptance rates of antiretroviral therapy to attempt interruption of transmission and clinical course and outcomes of persons with documented HIV exposure.

Studies of antiretroviral agents for preventing HIV infection in health care workers and from pregnant women to their infants have shown antiretroviral therapy to be efficacious. As a result of these findings, the Public Health Service has recommended the use of antiretroviral drugs to reduce HIV transmission among those exposed in the work place and from HIV-infected women to their infants. These findings may not be directly relevant to nonoccupational settings. Hence, further studies are needed before concluding that use of antiretroviral agents following nonoccupational exposures is clearly effective in preventing HIV infection. The surveillance system will provide data to address those issues.

The surveillance system will be a voluntary and anonymous system in which all health care providers will be encouraged to report by phone, fax, mail, or website 24 hours a day about all persons to whom they have offered antiretroviral therapy after a nonoccupational exposure to HIV. Data will be collected using an assigned unique registry number. During the initial contact, patient consent will be ascertained, data will be collected on the characteristics of the exposure event, knowledge of HIV status of the source patient, and treatment decision of the provider for patients whose HIV exposure has been documented. Follow-up information will be requested at 4–6 weeks, 6 months, and 12 months post prescription of post exposure therapy. Estimated cost to respondents and government is $200,000.00 a year.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden (in hrs)
Health Care Providers	100	5	.30	150
Total				150

2. A National Registry for Surveillance of Non-Occupational Exposures to Human Immunodeficiency Virus and Post-Exposure Antiretroviral Therapy—New—National Center for HIV, STD, and TB Prevention—To ensure the elimination of tuberculosis in the United States, key program activities such as finding tuberculosis infections in recent contacts of cases and in other persons likely to be infected, and providing preventive therapy, must be monitored. The Division of Tuberculosis Elimination (DTBE), is implementing two revised program management reports for annual submission: Aggregate report of follow-up for contacts of tuberculosis, and Aggregate report of screening and preventive therapy for tuberculosis infection. The respondents for these reports are the 68 state and local tuberculosis control programs receiving federal cooperative agreement funding through (DTBE). The revised reports phase out two twice-yearly program management reports in the Tuberculosis Statistics and Program Evaluation Activity (OMB 0920–0026): Contact Follow-up (CDC 72.16) and Completion of Preventive Therapy (CDC 72.21). The revised reports, which are being submitted for an OMB approval outside of OMB 0920–0026, have several improvements over the old reports for the respondents and for DTBE, such as the emphasis on preventive therapy outcomes, the focus on high-priority target populations vulnerable to tuberculosis, and programmed electronic report generation and submission through the Tuberculosis Information Management System. The old reports, CDC 72.16 and CDC 72.21, which have been submitted at least in some form by the respondents since 1961, are tabulated by hand.

Three program management reports in the previous series already have been phased out. They are Bacteriologic Conversion of Sputum (CDC 72.14), Case Register (CDC 72.15), and Drug Therapy (CDC 72.20). These three reports have been superseded by integrated reporting in Tuberculosis Statistics and Program Evaluation Activity (OMB 0920–0026). The discontinuation of these reports has resulted in an estimated reduction in the annual response burden of 159 hours. The cost to the respondent is $6,324.

Report	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Aggregate report of follow-up for contacts of tuberculosis	68	1	2.5	170
Aggregate report of screening and preventive therapy for TB infection	68	1	2.5	170
Total				340

3. Provider Survey of Partner Notification and Partner Management Practices following Diagnosis of a Sexually-Transmitted Disease (0920–0431)—Extension—The National Center for HIV, STD, and TB prevention, Division of STD Prevention, CDC is proposing to conduct a national survey of physician's partner management practices following the diagnosis of a sexually-transmitted disease. Partner notification, a technique for controlling the spread of sexually-transmitted diseases is one of the five key elements of a long standing public health strategy to control sexually-transmitted infections in the US. At present, there is very little knowledge about partner notification practices outside public health settings despite the fact that most STD cases are seen in private health care settings. No descriptive data currently exist that allow the Centers for Disease Control and Prevention to characterize partner notification practices among the broad range of clinical practice settings where STDs are diagnosed, including acute or urgent care, emergency room, or primary and ambulatory care clinics. The existing literature contains descriptive studies of partner notification in public health clinics, but no baseline data exist as to the practices of different physician specialties across different practice settings.

The CDC proposes to fill that gap through a national sample survey of 7300 office managers and physicians who treat patients with STDs in a wide variety of clinical settings; a 70% completion rate is anticipated (n=5110 surveys). This survey will provide the baseline data necessary to characterize infection control practices, especially partner notification practices, for syphilis, gonorrhea, HIV, and chlamydia and the contextual factors that influence those practices. Findings from the proposed national survey of office managers and physicians will assist CDC to better focus STD control and partner notification program efforts and to allocate program resources appropriately. Without this information, CDC will have little information about STD treatment, reporting, and partner management services provided by physicians practicing in the US. With changes underway in the manner in which medical care is delivered and the move toward managed care, clinical functions typically provided in the public health sector will now be required of private medical providers. At present, CDC does not have sufficient information to guide future STD control efforts in the private medical sector.

Data collection will involve a mail survey of practicing physicians. The questionnaire mailing will be followed by a reminder postcard after one week, a second mailing to non-respondents at three weeks, telephone follow-up with non-respondents at five weeks, and a final certified mailing of the survey to non-respondents at eight weeks. A study specific computerized tracking and reporting system will monitor all phases of the study. Receipt of the completed questionnaire or a refusal will be logged

into this computerized control system to ensure that respondents who return the survey are not contacted with reminders.

The current OMB approval for this collection covers the pilot only and expires on October 31, 1998. The pilot will vary the respondent payment to equal subsections of the sample using amounts of $0, $15, and $25. The re-submission of the full information collection package will include a report from the pilot including a detailed report of the response rates overall and break down by use of the various response rates.

Estimated cost to respondents and government based on an average pay rate of $25/hour, the estimated total cost burden for office managers to answer Section 1 is $10,650. Based on an average pay rate of $70/hour, the estimated cost burden for physicians is $94,640. Thus the total cost burden for the data collection effort is estimated to be $105,290.

Respondents	Sections	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Office Managers	1	7300	1	.08	584
Physicians	2–4	5110	3	.03	460
Physicians	5–10	5110	6	.20	6132
Total					7176

Dated: August 4, 1998.

Charles W. Gollmar,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–21581 Filed 8–11–98; 8:45 am]

BILLING CODE CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Developmental Disabilities Protection & Advocacy Program Performance Report.

OMB No.: 0980–0160.

Description: This information collection is a reporting by Protection & Advisory (P&A) systems in each State. Using this reporting format, the P&A systems describe their program performance during the previous fiscal year in the pursuit of their effort under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C., 6000 et seq.) to protect the civil and human rights of persons with developmental disabilities. This program performance report (PPR) is required by Section 107(b) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C., 6000 et seq.).

The PPR is submitted by each P&A system to the Department of Health and Human Services, which will use the data in the PPR to develop an annual report to the President, the Congress, and the National Council on Disability, as required by Section 107(c) of the Developmental Disabilities Assistance and Bill off Rights Act (42 U.S.C., 6000 et seq.). Additionally, the data in the reports will provide the Department with an overview for good management of the program, and will enable the Department to respond to Congressional requests.

Respondents: State, Local, or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Annual Program Performance Report	56	1	44	2,464

Estimated Total Annual Burden Hours: 2,464.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 6, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–21568 Filed 8–11–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, called "Health Plan Management System (HPMS)," HHS/HCFA/CHPP, No. 09–70–4004. We have provided background information about the proposed new system in the SUPPLEMENTARY INFORMATION section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice.

DATES: HCFA filed a new system report with the Chairman of the Committee on Government Reform and Oversight of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on July 31,1998.

To ensure that all parties have adequate time in which to comment, the new system of records, including routine uses, will become effective 40 days from the publication of this notice or from the date it was submitted to OMB and the Congress, whichever is later, unless HCFA receives comments which require alteration to this notice.

ADDRESSES: The public should address comments to Director, Division of Freedom of Information & Privacy, Health Care Financing Administration, 7500 Security Boulevard, C2–01–11, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, Monday through Friday 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Robinson, Health Care Financing Administration, Center for Health Plans and Providers, 7500 Security Boulevard, N3–09–16, Baltimore, Maryland 21244–1850. Her telephone number is (410) 786–1826.

SUPPLEMENTARY INFORMATION: The Health Plan Management System is a data file containing rates for selected performance measures for each Medicare health plan. The data are compiled by HIC number, member month contribution, and a flag to indicate if the member was counted in the rate's numerator. The system will collect rate information on categories such as the following:

- "Use of Services" measures such as the frequency of selected procedures (e.g., percutaneous transluminal coronary artery angioplasty, prostatectomy, coronary artery bypass with graft, hysterectomy, cholecystectomy, cardiac catheterization, reduction of fracture of the femur, total hip and knee replacement, partial excision of the large intestine, carotid endarterectomy); percentage of members receiving inpatient, day/night and ambulatory mental health and chemical dependency services; readmission for chemical dependency, and specified mental health disorders.
- "Effectiveness of Care" measures such as breast cancer screening, beta blocker treatment after a heart attack, eye exams for people with diabetes, and follow-up after hospitalization for mental illness.
- "Member Satisfaction" measures related to quality, access, and general satisfaction.
- "Functional Status" measures which are patient centered and track actual outcomes or results of care, addressing both physical and mental well-being over time.

The information from HPMS will be augmented by being linked to other HCFA data and other administrative data to provide validation and greater analytic capacity. The HPMS will be used to:

- Develop and disseminate summary information required by the Balanced Budget Act of 1997 that will inform beneficiaries and the public of indicators of health plan performance to help beneficiaries choose among health plans. The information will include plan-to-plan comparisons of benefits and co-payments supplemented with consumer satisfaction information and plan performance data.
- Support quality improvement activities. Summary data will be useful for health plans' internal quality improvement, as well as to HCFA and Peer Review Organizations in monitoring and evaluating the care provided by health plans.
- Conduct research and demonstrations addressing managed care quality, access, and satisfaction issues.
- Provide guidance for program management and policy development.

HPMS is derived from population-based tools such as Health Plan Employer Data and Information Set (HEDIS) and the Consumer Assessment of Health Plans Study (CAHPS). The system will contain information on recipients of Medicare Part A and Part B services who are enrolled in health plans. The total number of current enrollees is approximately 5 million. We expect this number to grow over time as beneficiaries move from the original Medicare fee-for-service program.

HEDIS reflects a joint effort of public and private purchasers, consumers, labor unions, health plans, and measurement experts to develop a comprehensive set of performance measures for Medicare, Medicaid, and commercial populations enrolled in managed care plans. HEDIS measures eight aspects of health care: effectiveness of care; access/availability of care, satisfaction with the experience of care, health plan stability, use of services, cost of care, informed health care choices, and health plan descriptive information. In 1997, HCFA is requiring reporting of a number of performance measures from HEDIS relevant to the Medicare managed care population. The HEDIS data is subject to audit, to ensure that plans submit accurate and complete data. Another aspect of the audit is to assess the reasonableness of the HEDIS measures. For example, if all or most health plans have problems with a particular measure, the problem could be with the measure, not the plans.

Included in HEDIS is a functional status measure which tracks both physical health and mental health status over a 2-year period through a self-administered instrument in which the beneficiary indicates whether his/her health status has improved, stayed the same, or deteriorated. The measure is risk adjusted for co-morbid conditions, income, race, education, social support, age, and gender. It will be used to compare how well plans care for seniors. It reflects the belief that high quality health care can either improve or at least slow the rate of decline in senior members' ability to lead active and independent lives.

In concert with the Agency for Health Care Policy and Research, HCFA sponsored the development of a Medicare specific version of the CAHPS consumer satisfaction survey. The survey will collect information about Medicare enrollees' satisfaction, access, and quality of care within managed care plans. Beginning in 1997, HCFA is requiring all Medicare contracting plans to participate in an independent third party administration of an annual member satisfaction survey.

All performance measures are subject to modification as new performance measurement sets are developed with a stronger focus on outcomes and chronic disease issues, including patient satisfaction and quality of life measures relevant to specific diseases.

The Privacy Act permits us to disclose information without the consent of individuals for "routine uses"—that is, disclosures that are compatible with the purpose for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected to produce estimates of health care use and quality, and determinants thereof, by the aged and disabled enrolled in group health plans. We anticipate the disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: July 31, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

09–70–4004

SYSTEM NAME:

Health Plan Management System (HPMS), HHS/HCFA/CHPP.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

HCFA Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Recipients of Medicare Part A (Hospital Insurance) and Part B (supplementary medical insurance) services who are enrolled in Medicare health plans.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under section 1875 of the Social Security Act (42 U.S.C. 1395ll), entitled Studies and Recommendations; section 1121 of the Social Security Act (42 U.S.C. 1121), entitled Uniform Reporting System for Health Services Facilities and Organizations; and section 1876 of the Social Security Act (42 U.S.C. 1395mm), entitled Payments to Health Maintenance Organizations and Competitive Medical Plans.

PURPOSES:

To collect and maintain information on Medicare beneficiaries enrolled in Medicare Health Plans in order to develop and disseminate information required by the Balanced Budget Act of 1997 that will inform beneficiaries and the public of indicators of health plan performance to help beneficiaries choose among health plans, support quality improvement activities within the plans, monitor and evaluate care provided by health plans; provide guidance to program management and policies, and provide a research data base for HCFA and other researchers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify additional circumstances under which HCFA may release information from the Health Plan Management System without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. Also, HCFA will require each prospective recipient of such information to agree in writing to certain conditions to ensure the continuing confidentiality and security, including physical safeguards of the information. More specifically, as a condition of each disclosure under these routine uses, HCFA will, as necessary and appropriate:

(a) Determine that no other Federal statute specifically prohibits disclosure of the information;

(b) Determine that the use or disclosure does not violate legal limitations under which the information was provided, collected, or obtained;

(c) Determine that the purpose for which the disclosure is to be made;

(1) Cannot reasonably be accomplished unless the information is provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect on or the risk to the privacy of the individual(s) that additional exposure of the record(s) might bring; and

(3) There is a reasonable probability that the purpose of the disclosure will be accomplished;

(d) Require the recipient of the information to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized access, use or disclosure of the record or any part thereof. The physical safeguards shall provide a level of security that is at least the equivalent of the level of security contemplated in OMB Circular No. A–130 (revised), Appendix III, *Security of Federal Automated Information Systems* which sets forth guidelines for security plans for automated information systems in Federal agencies;

(2) Remove or destroy the information that allows the subject individual(s) to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request;

(3) Refrain from using or disclosing the information for any purpose other than the stated purpose under which the information was disclosed, and

(4) Make no further uses or disclosure of the information except:

(i) To prevent or address an emergency directly affecting the health or safety of an individual;

(ii) For use on another project under the same conditions, provided HCFA has authorized the additional use(s) in writing; or

(iii) When required by law;

(e) Secure a written statement or agreement from the prospective recipient of the information whereby the prospective recipient attests to an understanding of and willingness to abide by the foregoing provisions and any additional provisions that HCFA deems appropriate in the particular circumstances; and

(f) Determine whether the disclosure constitutes a computer "matching program" as defined in 5 U.S.C. 552a(a)(8). If the disclosure is determined to be a computer "matching program," the procedures for matching agreements as contained in 5 U.S.C. 552a(o) must be followed.

Disclosure may be made:

1. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. To the Bureau of Census for use in processing research and statistical data directly related to the administration of programs under the Social Security Act.

3. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines

that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party or interest provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. To an individual or organization for a research, demonstration, evaluation, epidemiological or health care quality improvement project related to the prevention of disease or disability, or the restoration or maintenance of health.

5. To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating automated information systems (AIS) software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for AIS or telecommunications systems containing or supporting records in the system.

6. To a Peer Review Organization for health care quality improvement projects conducted in accordance with its contract with HCFA.

7. To state Medicaid agencies pursuant to agreements with the Department of Health and Human Services for determining Medicaid and Medicare eligibility of recipients of assistance under titles IV, XVIII, and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

8. To an agency of a state Government, or established by state law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state.

9. To another Federal or state (1) To contribute to the accuracy of HCFA's proper payment of Medicare health benefits, or (2) as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation, or a state statute or regulation that implements a health benefits program funded in whole or in part with Federal funds.

10. To other Federal agencies or states to support the administration of other Federal or state health care programs, if funded in whole or in part by Federal funds.

11. To the Social Security Administration for its assistance in the implementation of HCFA's Medicare and Medicaid programs.

12. To a HCFA Contractor, including but not limited to fiscal intermediaries and carriers under title XVIII of the Social Security Act, to administer some aspect of a HCFA-administered health benefits program, or to a grantee of a HCFA-administered grant program, which program is or could be affected by fraud or abuse, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud or abuse in such programs.

13. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States, including any state or local government agency, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud or abuse in such health benefits programs funded in whole or in part by Federal funds.

14. To any entity that makes payment for or oversees administration of health care services, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating fraud or abuse against such entity or the program or services administered by such entity, provided:

(i) Such entity enters into an agreement with HCFA to share knowledge and information regarding actual or potential fraudulent or abusive practices or activities regarding the delivery or receipt of health care services, or regarding securing payment or reimbursement for health care services, or any practice or activity that, if directed toward a HCFA-administered program, might reasonably be construed as actually or potentially fraudulent or abusive;

(ii) Such entity does, on a regular basis, or at such times as HCFA may request, fully and freely share such knowledge and information with HCFA, or as directed by HCFA, with HCFA's contractors; and

(iii) HCFA determines that it may reasonably conclude that the knowledge or information it has received or is likely to receive from such entity could lead to preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating fraud or abuse in the Medicare, Medicaid or other health benefits program administered by HCFA or funded in whole or in part by Federal funds.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored in file folders, magnetic tapes, or computer disks.

RETRIEVABILITY:

The records are retrieved by health insurance claim number.

SAFEGUARDS:

For computerized records, safeguards established in accordance with Department standards and National Institute of Standards and Technology guidelines (e.g., security codes) will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular ι10, Automated Information Systems Security Program; and HCFA Automated Information Systems (AIS) Guide, Systems Securities Policies, and OMB Circular No. A-130 (revised), Appendix III.

RETENTION AND DISPOSAL:

The records are maintained with identifiers as long as needed for program research.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Health Plans and Providers, Health Care Financing Administration, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write the system manager, who will require the system name, health insurance claim number, and, for verification purposes, name, address, date of birth, and sex to ascertain whether or not the individual's record is in the system.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought. (These access procedures are in accordance with the Department regulations 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

The identifying information contained in these records is obtained from the health plans (which obtained the data from the individual concerned) or the individuals themselves. Also, these data will be linked with HCFA administrative data, such as claims and enrollment data.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 98–21502 Filed 8–11–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4370–N–02]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: August 19, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received by the comments due date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–3055 (this is not a toll-free number). Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Description of Need: This Notice informs the publication that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to HUD's Mark-to-Market Request for Qualifications (RFQ) which specifies proposal submission requirements and subsequent HUD processing procedures. This approval is needed in order to issue the RFQ. The selection of qualified Participating Administrative Entities (PAEs) is authorized under the Multifamily Assisted Housing Reform and Affordability Act of 1997 ("FY 98 Appropriation Act") (Pub. L. No. 105–65; 111 Stat 1344, 1384, approved October 27, 1997).

The basis for expedited processing request is that the Department is implementing the Mark-to-Market Program authorized by MAHRA. This program is a high priority to the Department as it will reduce the long-term costs of project-based assistance; preserve low-income rental housing and reduce the cost of insurance claims under the National Housing Act related to mortgages insured by the Secretary and used to finance eligible multifamily housing projects.

Agency form numbers, if applicable: None.

Members of affected public: public and non-public entities.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents are 150; 20 hours per response, and the frequency of responses is 1.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. 35, is amended.

Dated: August 7, 1998.

Wayne Eddins,

Director, IRM Policy and Management Division.

[FR Doc. 98–21701 Filed 8–11–98; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

[NV–930–1430–01; N–62752]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service proposes to withdraw 5,360 acres of reserved Federal minerals from mining and 9,459.66 acres of public lands from surface entry and mining as part of the Ash Meadows National Wildlife Refuge, Nye County, Nevada. The reserved Federal minerals and public lands proposed for withdrawal are located within the existing boundary of the refuge. This notice closes these lands for up to 2 years from settlement, sale, location, and entry under the general land laws, including the mining laws. This notice does not affect private lands within the boundary. This application replaces withdrawal applications N–53691 and N–59336, which have been canceled.

DATES: Comments should be received on or before November 10, 1998.

ADDRESSES: Comments should be sent to the Nevada State Director, BLM, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 702–861–6532.

SUPPLEMENTARY INFORMATION: On July 22, 1998 a petition was approved allowing the U.S. Fish and Wildlife Service to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, and the following described reserved Federal mineral interest from location and entry under the mining laws, subject to valid existing rights:

Mount Diablo Meridian

(a) Public Lands

T. 17 S., R. 50 E.,
Sec. 9, lots 7 and 8;
Sec. 10, lot 12;
Sec. 14, lot 11;
Sec. 15, lots 1 to 4, inclusive;
Sec. 17, E½NE¼;

Sec. 19, lot 14;
Sec. 21, lots 5 and 6;
Sec. 22, lots 1 to 5, inclusive, W½SE¼, and SE¼SE¼;
Sec. 23, lots 3 and 4;
Sec. 26, S½;
Sec. 27;
Sec. 28, E½NE¼;
Sec. 29, NE¼ NW¼;
Sec. 32, NE¼ NE¼, S½NE¼, and N½SE¼;
Sec. 34, NE¼;
Sec. 35, NE¼, N½NW¼, SW¼NW¼, W½SW¼, E½SE¼, and NW¼SE¼;
Sec. 36, W½ and SE¼SE¼.
T. 17 S., R. 51 E.,
Sec. 31, lot 4, SE¼SW¼, and SW¼SE¼;
Sec. 32, S½NW¼.
T. 18 S., R. 50 E.,
Sec. 1, lots 1 to 4, inclusive;
Sec. 2, lots 1 and 2, S½NE¼, and SE¼;
Sec. 3, SW¼SW¼;
Sec. 9, W½NW¼;
Sec. 10, E½;
Sec. 11, N½NW¼ and W½SW¼;
Sec. 12, W½NE¼ and NW¼;
Sec. 13, SW¼NE¼, SE¼SW¼, NW¼SE¼, E½W½SW¼SE¼, and E½SW¼SE¼;
Sec. 14, NE¼, NW¼SE¼, and SE¼SE¼;
Sec. 15, E½ and E½SW¼;
Sec. 23;
Sec. 24, E½NE¼, NW¼NE¼, W½SW¼, and N½NW¼;
Sec. 25, S½N½ and NW¼NW¼;
Sec. 26, NE¼.
T. 18 S., R. 51 E.,
Sec. 5, lot 1;
Sec. 6, lots 2 to 6, inclusive, SW¼NE¼, SE¼NW¼, NE¼SW¼, and SE¼;
Sec. 7, NE¼ and E½NW¼;
Sec. 8, NW¼;
Sec. 18, lots 2 to 4, inclusive, SW¼NE¼, SE¼NW¼, and E½SW¼;
Sec. 19, lots 1 and 2, E½NE¼, NW¼NE¼, SW¼NE¼, E½NW¼, E½SW¼, and SE¼;
Sec. 20, W½E½ and W½;
Sec. 29, W½NE¼ and NW¼;
Sec. 30, lot 2, NE¼ (excluding patent #27–70–009), and E½NW¼.

The areas described aggregate 9,459.66 acres in Nye County.

(b) Reserved Federal Minerals

T. 17 S., R. 50 E.,
Sec. 10, lots 9, 10, 11, 13, and 14;
Sec. 16, NW¼NW¼;
Sec. 20, NE¼;
Sec. 21, lots 1 to 4, inclusive;
Sec. 28, SW¼SW¼, E½SW¼, SE¼;
Sec. 29, NW¼NE¼, SW¼SW¼, E½SE¼;
Sec. 33, W½NW¼, N½NE¼, SW¼NE¼;
Sec. 34, W½, SE¼;
T. 18 S., R. 50 E.,
Sec. 2, W½;
Sec. 3, lots 1 to 3, inclusive, SE¼;
Sec. 4, lot 3, S½NW¼, SW¼, W½SE¼;
Sec. 9, E½NW¼, W½E½;
Sec. 10, NW¼, NE¼SW¼;
Sec. 11, N½NE¼, SE¼SW¼, SW¼SE¼;
Sec. 12, E½NE¼.
T. 17 S., R. 51 E.,
Sec. 31, SE¼NE¼, E½SE¼;
Sec. 32, SW¼.
T. 18 S., R. 51 E.,
Sec. 5, lots 2 to 4, inclusive, S½N½, S½;
Sec. 6, lots 1 and 7, SE¼NE¼, SE¼SW¼;
Sec. 7, lots 1 and 2;
Sec. 8, E½, SW¼;
Sec. 17, W½E½, W½;
Sec. 18, SE¼NE¼, SE¼;
Sec. 30, NE¼ (within patent #27–70–0091).

The areas described aggregate 5,360 acres in Nye County.

The public lands and reserved Federal minerals proposed for withdrawal are within the existing boundary of the Ash Meadows Wildlife Refuge. Private lands within the existing boundary are not affected by this notice.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that a public meeting in connection with the proposed withdrawal will be held at a later date. A notice of the time and place will be published in the **Federal Register** and a newspaper in the general vicinity of the lands to be withdrawn at least 30 days before the scheduled date of the meeting. The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are rights-of-way, leases, and permits.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the U.S. Fish and Wildlife Service.

The applications, N–53691 and 59336, published in the 57 FR 4057, Feburary 3, 1992, and the 61 FR 36756, July 12, 1996, repectively, have been canceled.

Dated: August 6, 1998.

William K. Stowers,

Lands Team Lead.

[FR Doc. 98–21577 Filed 8–11–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Preparation of an Environmental Assessment for a Notice to Lessees To Reduce Nitrogen Oxides Emissions in the Central Planning Area of the Gulf of Mexico

AGENCY: Minerals Management Service, Interior.

ACTION: Preparation of an Environmental Assessment.

SUMMARY: Minerals Management Service (MMS) is beginning preparation of an Environmental Assessment (EA) for a Notice to Lessees (NTL) to reduce Nitrogen Oxides (NO_X) emissions in the Central Planning Area (CPA) of the Gulf of Mexico.

DATES: Comments due to MMS September 7, 1998. Draft EA for public review November 16, 1998. The EA completed January 25, 1999.

FOR FURTHER INFORMATION CONTACT: Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Terry Scholten, telephone (504) 736–1720.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico Outer Continental Shelf (OCS). The EA's examine the potential environmental effects of activities described in the proposed action, present MMS' conclusions regarding the significance of those effects, and are used as a basis for determining whether or not approval of the proposal constitutes major Federal actions that significantly affect the quality of the human environment in the sense of the National Environmental Policy Act, Section 102(2)(C).

The proposed action to be analyzed in this EA is a NTL to require best available control technology for NO_X emissions on all facilities in the CPA. The EA will also analyze other alternatives, as well as the no action alternative. The analysis in the EA will examine the potential environmental effects of the proposal and alternatives regarding potential impacts on coastal areas in the CPA.

The MMS requests interested parties to submit comments regarding any information or issues that should be addressed in the EA to Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394 by September 7, 1998. After completion of the EA, MMS will make a decision on

NO_X controls to be required in the short term.

Dated: August 6, 1998.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 98–21582 Filed 8–11–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Comprehensive Management Plan/ Environmental Impact Statement Oregon, California, Mormon Pioneer, and Pony Express National Historic Trails

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of Draft Environmental Impact Statement for Oregon, California, Mormon Pioneer, and Pony Express National Historic Trails.

SUMMARY: Pursuant to section 102(2) (c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a draft environmental impact statement and comprehensive management plan (EIS/CMP) for the Oregon, California, Mormon Pioneer, and Pony Express National Historic Trails.

DATES: The DEIS/CMP will remain available for public review through October 19, 1998. Public meetings held concerning the DEIS/CMP will be announced at a later date.

ADDRESSES: Comments on the draft EIS shall be submitted to the Superintendent, Long Distance Trails Office, 324 S. State St., Suite 250, Salt Lake City, UT 84145.

Copies of the draft EIS will be available for review at the public libraries in the counties crossed by the trails. A list with the specific addresses will be made available to the mailing list associated with this project. For additional information contact: Superintendent, Long Distance Trails Office, 324 S. State St., Suite 250, Salt Lake City, Utah 84145 (801) 539–4095.

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80228, (303) 969–2851 [or (303) 969–2832].

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C. Streets NW, Washington, DC 20240, (202) 208–6843.

SUPPLEMENTARY INFORMATION: This Draft Environmental Impact Statement for the Comprehensive Management Plan presents and proposal and an alternative for guiding future management of the four national historic trails. The plan serves as a coordinating document that provides broad-based policies, guidelines, and standards for administering the four trails in such a manner, as to ensure the protection of trail resources, their interpretation and continued use. Both alternatives aim to balance resource preservation and use. Alternative 1 (current conditions) reflects the wide variability in the administration and management, resource protection strategies, and interpretation, visitor experience, and use that exists today. Alternative 2 (the proposal) focuses on enhancing resource protection and visitor use. It calls for an improved visitor experience through integrated development and programming and a comprehensive strategy for resource protection, including an ambitious program to inventory and monitor resources that would bring together, in one location, information currently dispersed.

FOR FURTHER INFORMATION CONTACT: Superintendent Long Distance Trails Office at the above address and phone number.

Dated: August 4, 1998.

Michael D. Snyder,

Acting Regional Director, Intermountain Region, National Park Service.

[FR Doc. 98–21464 Filed 8–11–98; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Electrolytic Manganese Dioxide From Greece and Japan

Dismissal of Request for Institution of a Section 751(b) Review Investigation

AGENCY: United States International Trade Commission (Commission).

ACTION: Dismissal of a request to institute a section 751(b) investigation concerning the Commission's affirmative determinations in investigations Nos. 731–TA–406 and 408 (Final): Electrolytic Manganese Dioxide from Greece and Japan.[1]

SUMMARY: The Commission determines, pursuant to section 751(b) of the Tariff Act of 1930 (the Act)[2] and Commission rule 207.45,[3] that the subject request does not show changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determinations in investigations Nos. 731–TA–406 and 408 (Final): Electrolytic Manganese Dioxide from Greece and Japan. EMD is provided for in subheading 2820.10.00 of the Harmonized Tariff Schedule of the United States.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. 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. General information concerning the Commission may also be obtained by accessing its internet server at http://www.usitc.gov.

Background Information

On May 26, 1998, the Commission received a request to review its affirmative determination, as it applied to imports from Greece (the request), in light of changed circumstances, pursuant to section 751(b) of the Act.[4] The request was filed by counsel on behalf of Eveready Battery Company (Eveready), St. Louis, MO. Eveready is one of three U.S. producers of EMD. The company is a captive producer of EMD and a purchaser of EMD from other U.S. and foreign manufacturers. EMD is a major ingredient in the manufacture of dry cell batteries used in portable electronic devices.

Pursuant to section 207.45(b) of the Commission's Rules of Practice and Procedure,[5] the Commission published a notice in the **Federal Register** on June 3, 1998,[6] requesting comments as to whether the alleged changed circumstances warranted the institution of review investigations. The Commission received comments in support of the request from Eveready (the requester) and Tosoh Hellas, A.I.C., a Greek producers of EMD.[7] Comments

[1] The request concerned only imports from Greece. However, as the alleged changed circumstances predominantly related to the domestic industry, the Commission also solicited comments on the possibility to self-initiating a review of the outstanding order on imports from Japan.

[2] 19 U.S.C. § 1675(b).

[3] 19 CFR 207.45.

[4] 19 U.S.C. § 1675(b).

[5] 19 CFR 207.45(b).

[6] 63 FR 30254.

[7] Both Eveready and Tosoh Hellas, while supporting the initiation of a section 751(b) review investigation with respect to Greece, oppose the

in opposition to the request were received from Chemetals, Inc. and Kerr-McGee Chemical (Kerr-McGee), LLC, U.S. producers of EMD.

Analysis:

In considering whether to institute a review investigation under section 751(b), the Commission will not institute such an investigation unless it is persuaded there is sufficient information demonstrating:

(1) That there are significant changed circumstances from those in existence at the time of the original investigations;

(2) That those changed circumstances are not the natural and direct result of the imposition of the antidumping and/or countervailing duty orders, and;

(3) That the changed circumstances, allegedly indicating that revocation of the order would not be likely to lead to continuation or recurrence of material injury to the domestic industry, warrant a full investigation.[8]

After consideration of the request for review and the response to the notice inviting comments, the Commission has determined, pursuant to section 751(b) of the Act and Commission rule 207.45, that the information of record, including the request and the comments received in response to the notice, does not show changed circumstances sufficient to warrant institution of investigations to review the Commission's affirmative determinations in investigations Nos. 731–TA–406 and 408 (Final): Electrolytic Manganese Dioxide from Greece and Japan.

The request alleged the following changed circumstances: (1) the addition of a third recognized type of EMD (high-drain alkaline EMD), (2) structural changes in battery consumption, and (3) the impending unavailability of supply of regular and high-drain alkaline EMD from U.S. producers and producers in countries not subject to antidumping orders. The information available on the record does not persuade us that a full investigation is warranted for any of these allegations. In particular:

Addition of a third recognized type of EMD. The requester asserts that there is a recognized new type of EMD high-drain alkaline EMD that has been introduced to the market since the Commission's original investigations. While Eveready provided evidence concerning the existence of new high-drain batteries,[9] Eveready failed to provide specific evidence supporting its claim of a separate and new product such as chemical specifications, certifications, contracts, pricing, or other information about its own efforts to develop such a new product either internally or with suppliers. Moreover, Chemetals and Kerr-McGee, through sworn affidavits, directly refuted the commercial use of such a new product.

Structural changes in battery consumption.—The requester asserts that there has been a fundamental and permanent shift in battery consumption toward smaller AA and AAA cell batteries with a corresponding increase in demand for standard and "high-drain" alkaline EMD. The record indicates a continuing shift in battery consumption from larger C and D cells (predominantly used in lighting applications) to smaller AA and AAA (predominantly used in higher-drain portable electronic devices). While evidence of a shift in the composition of demand can be a factor supporting institution of a changed circumstances review, the Commission finds that institution is not warranted in this case. Although the record evidence indicates that there has been a shift in the composition of demand, there is no record evidence that this shift has resulted in a shift to a new, high-drain EMD, as alleged by Eveready. Indeed, since Eveready failed to provide specific evidence of a new high-drain EMD, the underlying basis for Eveready's assertion does not exist.

Impending "short-supply" of regular and high-drain alkaline EMD.—The requester asserts that the U.S. industry is operating at full capacity and that the industry faces unsurmountable barriers to expansion that will prohibit it from meeting anticipated future demand for EMD. Additionally, the requester asserts that EMD from all non-subject foreign sources has already been allocated to other purchasers and that Everyeady's only available source of "high-drain" EMD is from Greece. Despite the requester's anecdotal claims, it failed to provide specific evidence regarding the U.S. industry's capacity limitations, Eveready's own production limitations, Eveready's attempts to work with other U.S. producers, or its efforts to qualify or procure EMD from non-subject and subject sources including Greece. Both Chemetals and Kerr-McGee provided substantial evidence to contradict Eveready's claims, most telling being an analysis of prices. It appears that alkaline EMD prices have remained relatively stable in recent years and do not reflect the severe supply limitations that are alleged to be present in the market. Moreover, Chemetals and Kerr-McGee have indicated their willingness and ability to increase supplies of qualified EMD to Eveready through the negotiation and signing of long-term supply contracts.

In light of the above analysis, the Commission determines that institution of a review investigation under section 751(b) of the Act concerning the Commission's affirmative determinations in investigations Nos. 731–TA–406 and 408 (Final): Electrolytic Manganese Dioxide from Greece and Japan, is not warranted.

Issued: August 6, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–21618 Filed 8–11–98; 8:45 am]

BILLING CODE 7020–02–P

Commission self-initiating such a review investigation concerning Japan.

[8] See, 19 U.S.C. § 1675(b)(2)(A); Heavy Forged Handtools from the People's Republic of China, 62 FR 36305 (July 7, 1997); Certain Cold-Rolled Carbon Steel Flat Products from Germany and the Netherlands, 61 FR 17319 (April 19, 1996); A. Hirsh, Inc. v. United States, 737 F.Supp. 1186 (CIT 1990: Avesta A v. United States, 724 F. Supp. 974 (CIT 1988), *aff'd* 914 F.2d 232 (Fed. Cir. 1990); and Avesta AB v. United States, 689 F. Supp. 1173 (CIT 1988).

In the Uruguay Round Agreements Act of 1994 (the URAA), Congress changed the substantive standard applicable to changed circumstances reviews from whether the domestic industry would be materially injured or threatened with material injury if the order were revoked to whether revocation of the order is likely to lead to the continuation or recurrence of material injury to the domestic industry.

[9] Based on the record, it apears that gains in performance exhibited by new high-drain batteries are the result of improvements in battery design and not the result of a new type of high-drain EMD. The record reflects that EMD currently employed in high-drain applications is in fact high quality standard alkaline EMD.

INTERNATIONAL TRADE COMMISSION

[Investigation 332–396]

Economic Trends and Barriers to Trade in Products Covered by the WTO Agreement on Agriculture

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: August 3, 1998.

SUMMARY: Following receipt of a request on July 20, 1998, from the U.S. Trade Representative (USTR), the Commission instituted investigation No. 332–396, Economic Trends and Barriers to Trade in Products Covered by the WTO Agreement on Agriculture, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION: Industry-specific information may be obtained from Cathy Jabara (202–205–3309) or Roger Corey (202–205–3327), Office of Industries, U.S. International Trade

Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact William Gearhart of the Office of the General Counsel (202–205–3091). News media should contact Peg O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

The USTR has requested that the Commission provide a report containing an informational and analytical resource base to assist the Administration in the upcoming WTO negotiations on agriculture trade to begin in late 1999. As requested by USTR, in preparing its report, the Commission will examine the following sectors (including both the basic commodity and its processed products, as appropriate): grains; oilseeds (including peanuts); dairy; animals and animal products, other than dairy; sugar and other sweeteners; wine; cotton; fruits and vegetables (and tree nuts); and other products as covered in the WTO Agreement on Agriculture. The examination will include:

(1) Recent trends in trade, production, and other relevant economic variables in these sectors;

(2) Barriers and/or distortions in major countries and product markets affecting this trade; and

(3) Methodologies for assessment of the effects of changes in various trade rules in each of these sectors upon the trade and economic interests of the United States.

The report will also include summaries of the information developed, both with respect to sector trends and trade barriers.

As requested, the Commission plans to transmit its report to USTR by July 20, 1999, USTR has indicated portions of the report will be classified as "confidential" and will also be regarded as an inter-agency memorandum that will contain predecisional advice and be subject to the deliberative process privilege.

Preliminary Written Comments

(1) In order to assist the Commission in identifying the barriers and/or distortions referred to above, the Commission requests that interested parties provide preliminary written comments on such barriers and/or distortions by November 30, 1998. (2) All preliminary written comments should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. (3) Interested parties are also encouraged to provide further information at the public hearing and in prehearing and posthearing briefs/statements.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on March 16, 1999. All persons will have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing 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., March 2, 1999. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., March 4, 1999; the deadline for filing posthearing briefs or statements is 5:15 p.m., March 31, 1999. In the event that, as of the close of business on March 2, 1999, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after March 2, 1999 to determine whether the hearing will be held.

Written Submissions

In lieu of, or in addition to, participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter 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 in the Office of the Secretary to the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than 5:15 p.m. on March 31, 1999. 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. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

List of Subjects

WTO, agricultural trade, production, barriers, distortions, grains, oilseeds, dairy, animals and animal products, sugar and other sweeteners, wine, cotton, fruits and vegetables, Agreement on Agriculture, and methodologies.

Issued: August 5, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–21619 Filed 8–11–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB Emergency Approval; National Survey of Police Executives, District Commanders and Agencies.

The Department of Justice, Office of Community Oriented Policing Services (COPS) has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. OMB approval has been requested by August 17, 1998. If granted, the emergency approval is only valid for 180 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until October 13, 1998. During the 60-day regular review all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to the COPS Office, Program/Policy Support and Evaluation Division,

COPS Office, U.S. Department of Justice, 1100 Vermont Avenue, NW., Washington, DC 20530. Comments also may be submitted to the COPS Office via facsimile to 202–633–1386. Your comments should address one or ore of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* National Survey of Police Executives, District Commanders and Agencies.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS 28/01. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* A sample of local law enforcement agency heads and precinct/district commanders that have received grant funding from the COPS Office will be surveyed regarding the nature and extent of community policing implementation in their agencies and precincts/districts.

to uphold its mandate, the COPS Office has awarded hiring and redeployment grants, innovative grants, and training grants to over 10,000 law enforcement agencies nationwide. While the COPS Office has made significant strides in funding officers it is important to consider the 1994 Crime Bill and the emergence of COPS in a long-term perspective. The proposed survey aims to answer questions regarding the nature and extent of community policing implementation across the United States.

COPS data and prior national surveys of community policing implementation are limited in their capacity to describe how extensive community policing implementation is. In addition, existing data sets do not permit exploration of the likelihood that implementation of community policing varies within jurisdictions particularly large ones that are decentralized to precinct or district levels. The National Survey of Police Executives, District Commanders and Agencies will be able to capture variations within a jurisdiction.

Surveys will incorporate elements that the COPS Office has identified as key components of community policing and will draw upon prior surveys, other literature, and prior knowledge to develop a comprehensive listing of community policing elements. Questions will provide more precise information about the extent to which each element is implemented.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* This collection is being conducted in two phases as a pilot survey and a larger follow-up survey. Two sections, Section A and Section B will be utilized; a total of approximately 6700 respondents will be surveyed. Estimated time to complete Section A is 20 minutes with no preparation time; estimated time to complete Section B is 1.5 hours including preparation time.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 6141.6 hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 6, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–21574 Filed 8–11–98; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

International Competition Policy Advisory Committee (ICPAC); Notice of Meeting

AGENCY: Department of Justice.

ACTION: Notice of meeting.

SUMMARY: The International competition Policy Advisory Committee (the "Advisory Committee") will hold its second meeting on September 11, 1998. The Advisory Committee was established by the Department of Justice to provide advice regarding issues relating to international competition policy; specifically, how best to cooperate with foreign authorities to eliminate international anticompetitive cartel agreements, how best to coordinate United States' and foreign antitrust enforcement efforts in the review of multinational mergers, and how best to address issues that interface international trade and competition policy concerns. The meeting will be held at The Carnegie Endowment for International Peace, Root Conference Room, 1779 Massachusetts Avenue, N.W., Washington, D.C. 20036 and will begin at 10:00 a.m. EST and end at approximately 4:00 p.m. The agenda for the meeting will be as follows:

1. Enforcement Cooperation.
2. International Merger Review.
3. Trade and Competition Policy Interface Issues.
4. Work Program: Next Steps.

Attendance is open to the interested public, limited by the availability of space. Persons needing special assistance, such as sign language interpretation or other special accommodations, should notify the contact person listed below as soon as possible. Members of the public may submit written statements by mail, electronic mail, or facsimile at any time before or after the meeting to the contact person listed below for consideration by the Advisory Committee. All written submissions will be included in the public record of the Advisory Committee. Oral statements from the public will not be solicited or accepted at this meeting. For further information contact: Merit Janow, c/o Eric J. Weiner, U.S. Department of Justice, Antitrust Division, 601 D Street, N.W., Room 10024, Washington, D.C. 20530, Telephone: (202) 616–2578, Facsimile: (202) 514–4508, Electronic mail: icpac@usdoj.gov.

Merit E. Janow,

Executive Director, International Competition Policy Advisory Committee.

[FR Doc. 98–21642 Filed 8–11–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1936–98]

Immigration and Naturalization Service User Fee Advisory Committee: Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee meeting: Immigration and Naturalization Service User Fee Advisory Committee.

Date and time: Wednesday, November 18, 1998, at 1:00 p.m.

Place: Immigration and Naturalization Service Headquarters 425 I Street, NW., Washington, DC 20536, Shaughnessy Conference Room—6th Floor.

Status: Open. 18th meeting of this Advisory Committee.

Purpose: Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service pursuant to section 286(k) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(k) and the Federal Advisory Committee Act 5 U.S.C. app. 2. The responsibilities of this standing Advisory Committee are to advise the Commissioner of the Immigration and Naturalization Service on issues related to the performance of airport and seaport immigration inspection services. This advice should include, but need not be limited to, the time period during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. These responsibilities are related to the assessment of an immigration user fee pursuant to section 286(d) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(d). The Committee focuses attention on those areas of most concern and benefit to the travel industry, the traveling public, and the Federal Government.

Agenda:

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of activities since last meeting.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of future traffic trends.
6. Discussion of relevant written statements submitted in advance by members of the public.
7. Scheduling of next meeting.

Public participation: The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least 5 days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the contact person for consideration by this Advisory Committee. Only written statements received by the contact person at least 5 days prior to the meeting will be considered for discussion at the meeting.

Contact person: Charles D. Montgomery, Office of the Assistant Commissioner, Inspections, Immigration and Naturalization Service, Room 4064, 425 I Street, NW., Washington, DC 20536, telephone (202) 616–7498 or fax (202) 514–8345.

Dated: August 4, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–21561 Filed 8–11–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1195]

RIN 1121–ZB31

Notice of Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of meeting.

SUPPLEMENTARY INFORMATION: A meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will take place in the District of Columbia, beginning at 2:00 p.m. on Wednesday, August 19, 1998 and ending at 4:00 p.m. on August 19, 1998. Expedited scheduling considerations for this meeting precluded the full notice period. In addition to this notice, attendees of meetings held since the Coordinating Council was reconstituted to include practitioner members will be notified separately of this meeting.

This advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will meet at Jefferson Middle School, located at 801 Seventh St. SW., Auditorium, Washington, D.C. 20024.

The Coordinating Council, established pursuant to Section 3(2)A of the Federal Advisory Committee Act, 5 U.S.C. App. 2, will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This meeting will be open to the public. For security reasons, members of the public who are attending the meeting must contact the Juvenile Justice Resource Center by close of business August 17, 1998. The point of contact is Jan Shaffer who can be reached at (301) 519–5886. The public is further advised that a picture identification is required to enter the building.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 98–21567 Filed 8–11–98; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 28, 1998. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Modern Records Programs (NWM), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Animal Plant Health Inspection Service, Scientific Services Division (N1–463–96–1, 38 items, 34 temporary items). Records relating to the regulation of the environmental release, import, field testing, and inter-state movement of genetically-engineered crops and organisms. Administrative records, permit files, and files relating to petitions to deregulate currently regulated crops or organisms are proposed for disposal. Special studies and records covering policy and guidelines are proposed for permanent retention.

2. Department of Commerce, Patent and Trademark Office (N1–241–98–2, 5 items, 5 temporary items). Network and systems operations and maintenance records from the Office of the Chief Information Officer and textual and electronic records for four electronic systems which perform day-to-day administrative functions: Job Application Rating System, Patent Search Room Badge System, Enterprise Call Center System, and the Revenue Accounting and Management System.

3. Department of Defense, Office of the Secretary of Defense (N1–330–98–3, 2 items, 2 temporary items). Reduction in the retention period for health research protocols and grants, which were previously approved for disposal. Electronic versions of these records created by electronic mail and word processing applications are also proposed for disposal.

4. Department of Defense, Office of the Secretary of Defense (N1–330–98–2, 4 items, 4 temporary items). Reduction in the retention period for records relating to continuing nursing and medical education programs, which were previously approved for disposal. Electronic versions of these records created by electronic mail and word processing applications are also proposed for disposal.

5. Department of Housing and Urban Development (N1–207–98–4, 6 items, 6 temporary items). Budget Office subject files primarily dealing with the Administrative Operations Fund. Records date from the period 1958 to 1972. Also included are Federal Housing Administration computer printouts relating to insurance reserves and mortgage and major home improvement loan insurance.

6. Congressional Commission on Servicemembers and Veterans Transition Assistance (N1–220–98–9, 5 items, 2 temporary items). Panel files and electronic mail and word processing records. Files proposed for permanent retention include subject files, reports and other publications and the files of the executive director and the executive administrative director.

7. Social Security Administration, Division of Representative Payment and Evaluation (N1–47–98–1, 1 item, 1 temporary item). Form SSA–6233–BK "Representative Payee Report of Benefits and Dedicated Account", which is a statement of monthly benefits and funds in a dedicated account involving Title XVI or concurrent claims.

8. Tennessee Valley Authority, Procurement Division (N1–142–98–15, 2 items, 2 temporary items). Electronic data interchange trading agreements including related electronic mail and word processing records. These administrative records allow the agency to transmit common business documents electronically to agency vendors.

9. Tennessee Valley Authority, Resource Group (N1–142–98–12, 1 item, 1 temporary item). Computer printouts from a defunct agency program containing data concerning land use, facilities, crops, livestock and fertilizer use. A sample of these records was previously approved for permanent retention.

10. Tennessee Valley Authority, Human Resources Division (N1–142–97–27, 1 item, 1 temporary item). Files of a defunct agency study group tasked with studying options for health care and other employee benefit programs.

Dated: July 31, 1998.

Geraldine N. Phillips,

Acting Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 98–21592 Filed 8–11–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing on Bus Crashworthiness

The National Transportation Safety Board will convene a public hearing beginning at 10:00 a.m., local time on Wednesday, August 12, 1998, at the Riviera Resort Hotel, 2901 Las Vegas Blvd South, Las Vegas, Nevada. For more information, contact Jeanmarie Poole, NTSB Office of Highway Safety at (202) 314–6440 or Terry Williams,

NTSB Office of Public Affairs at (202) 314–6100.

Dated: August 6, 1998.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 98–21560 Filed 8–11–98; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Number 40–2259]

Pathfinder Mines Corporation; Applications, Hearings, Determinations, Etc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Receipt of Application from Pathfinder Mines Corporation to change two site-reclamation milestones in Condition 61 of Source Material License SUA–672 for the Lucky Mc, Wyoming uranium mill site. Notice of Opportunity for a Hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated July 23, 1998, an application from Pathfinder Mines Corporation (PMC) to amend License Condition (LC) 61 of its Source Material License No. SUA–672 for the Lucky Mc, Wyoming uranium mill site. The license amendment application proposes to modify LC 61 to change the completion date for two site-reclamation milestones. The new dates proposed by PMC would extend completion of placement of the final radon barrier cover over tailings pile and placement of the erosion protection cover by three years and three months.

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, Uranium Recovery Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

SUPPLEMENTARY INFORMATION: The portion of LC 61 with the proposed changes would read as follows:

A. (3) Placement of final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m²/s above background—December 31, 2001.

B. (1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of Appendix A of 10 CFR Part 40—December 31, 2002.

PMC's application to amend LC 61 of Source Material License SUA–672, which describes the proposed changes to the license condition and the reasons for the request is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for hearing must be filed within 30 days of the publication of this notice in the Federal Register. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Pathfinder Mines Corporation, 935 Pendell Boulevard, P.O. Box 730, Mills, Wyoming 82644, Attention: Tom Hardgrove; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 45 days of the publication of this notice in the Federal Register. The comments may be provided to David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 6th day of August 1998.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–21605 Filed 8–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

In the Matter of Virginia Electric and Power Company North Anna Power Station, Unit Nos. 1 and 2; Exemption

The Virginia Electric and Power Company (VEPCO, the licensee) is the holder of Facility Operating License Nos. NPF–4 and NPF–7, which authorize operation of the North Anna Power Station (NAPS), Unit Nos. 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors at the licensee's site located in Louisa County, Virginia.

II

Title 10 of the *Code of Federal Regulations* (10 CFR), Section 20.1703, "Use of individual respiratory protection equipment" requires in subsection (a)(1) that ". . . the licensee shall use only respiratory protection equipment that is tested and certified or had certification extended by the National Institute for Occupational Safety and Health/Mine Safety and Health Administration (NIOSH/MSHA)." Further, 10 CFR 20.1703(c) requires that "the licensee shall use as emergency devices only respiratory protection equipment that has been specifically certified or had certification extended for emergency use by NIOSH/MSHA," and

10 CFR Part 20, Appendix A, Protection Factors for Respirators, Footnote d.2 (d), states that ". . . the protection factors apply for atmosphere-supplying respirators only when

supplied with adequate respirable air. Respirable air shall be provided of the quality and quantity required in accordance with NIOSH/MSHA certification (described in 30 CFR part 11). Oxygen and air shall not be used in the same apparatus." By letter dated March 3, 1998, as supplemented May 5, 1998, the licensee requested an exemption from certain requirements of 10 CFR 20.1703(a)(1), 10 CFR 20.1703(c) and 10 CFR Part 20, Appendix A, Footnote d.2 (d).

Pursuant to 10 CFR 20.2301, the Commission may, upon application by a licensee or upon its own initiative, grant an exemption from the requirements of the regulations in Part 20 if it determines that the exemption is authorized by law and would not result in undue hazard to life or property.

III

The NAPS 1&2 containments are designed to be maintained at subatmospheric pressure during power operations. The containment pressure can range from 9.0 to 11.0 pounds per square inch absolute (psia). This containment environment could potentially impact personnel safety due to reduced pressure and resulting oxygen deficiency. Such environment requires the use of a Self-Contained Breathing Apparatus (SCBA) with enriched oxygen breathing gas. The licensee initially purchased Mine Safety Appliances, Inc. (MSA) Model 401 open-circuit, dual-purpose, pressure-demand SCBAs constructed of brass components which were originally intended for use with compressed air. The licensee qualified the Model 401 cylinders for use with 35% oxygen/65% nitrogen following the recommendations of the Compressed Gas Association's Pamphlet C–10, Recommended Procedures for Changes of Gas Service for Compressed Gas Cylinders, which established procedures to utilize these devices with an enriched oxygen mixture. The licensee is currently using these SCBAs with 35% oxygen/65% nitrogen instead of compressed air. The MSA Model 401 SCBA has received the NIOSH/MSHA certification for use with compressed air, but has not been tested for 35% enriched oxygen applications. Using these SCBAs without the NIOSH/MSHA certification requires an exemption from 10 CFR 20.1703(a)(1), 10 CFR 20.1703(c) and 10 CFR Part 20, Appendix A, Protection Factors for Respirators, Footnote d.2.(d).

IV

Pursuant to 10 CFR 20.1703(a)(2), SCBAs that have not been tested or certified or for which certification has not been extended by NIOSH/MSHA require a demonstration by testing or reliable test information that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use. VEPCO contracted with National Aeronautic and Space Administration's (NASA) White Sand Test Facility (WSTF) and Lawrence Livermore National Laboratory (LLNL) to conduct applicable oxygen compatibility testing. WSTF evaluated the compatibility of the MSA Custom 4500 SCBA (testing of the model "MSA Custom 4500" envelops the lower pressure applications of models "MSA Ultralite" and "Model 401") with an oxygen-enriched breathing gas mixture. Based on these evaluations, the licensee concluded that compatibility exists provided 1) all hydrocarbon contamination is removed, 2) the SCBAs are maintained so as to preclude the introduction of hydrocarbon contamination, and 3) the temperature of the system does not exceed 135° F when the regulator is first activated. LLNL also concluded that an MSA Custom 4500, equipped with the interchangeable silicone facepiece, meets the National Fire Protection Association Flame and Heat Test requirements whether operated with 35% oxygen/65% nitrogen breathing gas mixture or with compressed air.

The licensee has indicated that the above conditions are met as follows: (1) the MSA repair guidance stipulates that no hydrocarbon-based compounds are to be used within the pressure boundary during maintenance, (2) the SCBAs are required to be stored and repaired in clean, dry locations free of chemical contamination, (3) containment average temperature is required by Technical Specification to be less than or equal to 120°F at NAPS 1&2, and (4) VEPCO procedural guidance presently requires that SCBAs using 35% oxygen 65% nitrogen breathing gas mixture be equipped with a silicone facepiece. VEPCO has also stated that it has over 20 years of actual safe operating experience using SCBAs with 35% oxygen/65% nitrogen mixture with no incidents of oxygen-induced failure or equipment maintenance problems associated with the enriched oxygen operation.

The combination of the existing NIOSH/MSHA certification of the SCBAs (with compressed air), the testing of the SCBA with the enriched oxygen-nitrogen mixture conducted for VEPCO by NASA and LLNL, and VEPCO's safe use history constitutes an adequate basis for granting the requested exemption to permit the use of MSA SCBAs Model 401, Custom 4500 and Ultralite with 35% oxygen-65% nitrogen breathing air mixture in the sub-atmospheric containments of NAPS, Units 1 and 2.

V

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.2301, the requested exemption is authorized by law, and will not result in undue hazard to life or property. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 20.1703(a)(1), 10 CFR 20.1703(c) and 10 CFR Part 20, Appendix A, Footnote d.2.(d), for North Anna Power Station, Unit 1 and Unit 2, provided VEPCO uses SCBAs identified and meeting the formal testing outlined above and follows the above described conditions.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (63 FR 40324).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of July, 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–21606 Filed 8–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of August 10, 17, 24, and 31, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 10

There are no meetings the week of August 10.

Week of August 17—Tentative

Wednesday, August 19

11:30 a.m.—Affirmation Session (Public Meeting) (if needed)

Week of August 24—Tentative

Tuesday, August 25

10:00 a.m.—Briefing on 10 CFR Part 70—Proposed Rulemaking, "Revised Requirements for the Domestic Licensing of Special Nuclear Material" (Public Meeting) (Contact: Elizabeth Ten Eyck, 301–415–7212)

Wednesday, August 26

2:00 p.m.—Briefing on Status of Activities with CNWRA and HLW Program (Public Meeting) (Contact: Mike Bell, 301–415–7286)

3:30 p.m.—Affirmation Session (Public Meeting) (if needed)

Week of August 31

Wednesday, September 2

10:00 a.m.—Briefing on PRA Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5828)

11:30 a.m.—Affirmation Session (Public Meeting) (if needed)

Thursday, September 3

10:00 a.m. and 1:30 p.m.—All Employees Meetings (Public Meetings) on "The Green" Plaza Area between buildings at White Flint (Contact: Bill Hill—301–415–1661)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact Person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: August 7, 1998.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98–21667 Filed 8–7–98; 4:14 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 20, 1998, through July 31, 1998. The last biweekly notice was published on July 29, 1998 (63 FR 40551).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 11, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or

petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is 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 for the particular facility involved.

Baltimore Gas and Electric Company, Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of amendment request: July 20, 1998.

Description of amendment request: Baltimore Gas and Electric Company (BGE) request a modification involving replacing the service water (SRW) heat exchangers with new plate and frame heat exchangers having increased thermal performance capability. A similar license amendment dated February 8, 1998, was granted to Operating License No. DPR–53—Calvert Cliffs Nuclear Power Plant, Unit 1.

The planned modification for Unit 2 is virtually identical to the one just completed for Unit 1 during the spring 1998 refueling outage. The only exception is the addition of an extra manual valve in the Unit 2 system to isolate the bypass line for maintenance. This additional manual valve is needed due to the change in location of the tie-in to the main header. (The Unit 1 bypass line ties into the main header downstream of a control valve; therefore, it did not need a separate isolation valve for maintenance.)

The saltwater and SRW piping configuration will be modified as necessary to allow proper fit-up to the new components. A flow control scheme to throttle saltwater flow to the heat exchangers and the associated bypass lines will be added. Saltwater strainers with an automatic flushing arrangement will be added upstream of each heat exchanger. The majority of the physical work associated with this modification is restricted to the SRW pump room.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

None of the systems associated with the proposed modification are accident initiators. The SW and SRW Systems are used to mitigate the effects of accidents analyzed in the UFSAR [Updated Final Safety Analysis Report]. The SW and SRW Systems provide cooling to safety-related equipment following an accident. They support accident mitigation functions; therefore, the proposed modification does not increase the probability of an accident previously evaluated.

The proposed modification will increase the heat removal capacity of the SRW System. The design provided under this activity ensures that the safety features provided by the SW and SRW are maintained, and in some instances enhanced; i.e., the availability of important-to-safety equipment required to mitigate the radiological consequences of an accident described in the UFSAR is enhanced by the

flexibility and increased thermal margin provided with this design.

The redundant cooling capacity of the SW and SRW Systems have not been altered. Furthermore, the proposed activity will not change, degrade, or prevent actions described or assumed in any accident described in the UFSAR. The proposed activity will not alter any assumptions previously made in evaluating the radiological consequences of any accident described in the UFSAR. Therefore, the consequences of an accident previously evaluated in the UFSAR have not increased.

Therefore, the proposed modification does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed activity involves modifying the SW and SRW System components necessary to support the installation of new SRW heat exchangers. None of the systems associated with this modification are identified as accident initiators in the UFSAR. The SW and SRW Systems are used to mitigate the effects of accidents analyzed in the UFSAR. None of the functions required of the SRW or SW System have been changed by this modification. This activity does not modify any system, structure, or component such that it could become accident initiator, as opposed to its current role as an accident mitigator.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The Safety design basis for the SW and SRW System is the availability of sufficient cooling capacity to ensure continued operation of equipment during norma[1] and accident conditions. The redundant cooling capacity of these systems, assuming a single failure, is consistent with assumptions used in the accident analysis.

The design, procurement, installation, and testing of the equipment associated with the proposed modification are consistent with the applicable codes and standards governing the original systems, structures, and components. The design of instruments and associated cabling ensures that physical and electrical separation of the two subsystems is maintained. Common-mode failure is not introduced by the activity. The equipment is qualified for the service conditions stipulated for that environment. New cable and raceways for this design will be installed in accordance with seismic design requirements. The additional electrical load has been reviewed to ensure the load limits for the vital 1E buses are not exceeded. The circuits and components related to the control valves control loops are safety-related, are similar to those used for the other safety-related flow control functions. The proposed modification will not have any adverse effects on the safety-related functions of the SW and SRW Systems.

For the above reasons, the existing licensing bases have not been altered by the proposed modification. This activity will not reduce the margin of safety as it exists now. In fact, the margin of safety has been increased by this activity due to the increase in the thermal capacity of the dual train design (i.e., two heat exchangers per train versus one heat exchanger per train of the original design) and the increased availability of safety-related components.

Therefore, this proposed modification does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: S. Singh Bajwa, Director.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: July 13, 1998.

Description of amendment request: The proposed amendments would revise the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and BVPS–2) Updated Final Safety Analysis Report (UFSAR) descriptions of the Intake Structure main entrance and interconnecting cubicle doors. The current UFSAR descriptions state that the cubicle access doors are open to permit excess water from a major pipe rupture to flow out of the cubicles thereby avoiding internal flooding. The proposed changes would address a new failure mode of safety-related equipment that had not been previously considered for BVPS–1. The proposed changes would state that the cubicle interconnecting flood protection doors are normally closed with their inflatable seals depressurized and that the associated security/fire doors are normally closed. The proposed door closure arrangement is intended to protect the safety-related equipment in the interconnecting cubicles from the consequences of potential internal flooding.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change revises the text of the UFSAR for Unit 1 and Unit 2 to describe how protection is provided against potential internal floods in the cubicles that house the Unit 1 River Water and Unit 2 Service Water Pumps. The previous description concluded that the Unit 1 River Water pumps were protected because open cubicle access doors will permit excess water to flow out of the cubicles. The practice that has changed, and is described in the proposed revisions to the Unit 1 and Unit 2 UFSARs, will provide protection of the Unit 1 River Water Pumps and the Unit 2 Service Water Pumps so that no flooding event can adversely affect more than one Unit 1 or Unit 2 pump. Therefore, it can be concluded that the proposed changes do not involve any increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The effect of flooding the pump cubicles was considered in BVPS–1 to have no adverse effect because open cubicle access doors would permit excess water to flow out of the cubicles, and pipe cracks in moderate energy piping was not part of the design basis. Revising the door arrangement described in the BVPS–1 UFSAR such that the security/fire doors are normally closed, requires that the effects of flooding be considered. Engineering analysis shows that a moderate energy pipe crack, (i.e., the BVPS–2 design basis internal flood), produces a leak rate of 1162 gpm, which results in a maximum water level of 0.82 feet, with the security/fire doors closed. The water level in the adjacent cubicle would reach a level at 0.37 feet. This is below the level which would cause failures of the MCCs [Motor Control Centers] in the pump cubicles.

The maximum leak rate from a failure of a Unit 1 rubber expansion joint in a pump cubicle would result in water rising to a level which would cause the MCCs to be flooded and fail; therefore, maintaining the flood door between the adjacent cubicles closed limits the impact to a single train.

Failure of a single train of River Water is analyzed in the USAR; therefore, this change would not introduce a new or different type of accident.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change in the Unit 1 and Unit 2 UFSARs describes how protection is provided for the Unit 1 River Water, and the Unit 2 Service Water pumps. Protection of the Unit 1 River Water Pumps and the Unit 2 Service Water pumps is provided so that no flooding event can adversely affect more than one Unit 1 or Unit 2 pump. Therefore, it can be concluded that the proposed changes do not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: July 9, 1998.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3/4.7.1.1 and associated Bases for both units. TS 3.7.1.1 currently provides requirements for reducing the power range high neutron flux trip setpoint when one or more main steam safety valves are inoperable. The current basis for determining the amount of trip setpoint reduction has been determined to be non-conservative. The proposed amendment would specify maximum allowable reactor power level based on the number of operable main steam safety valves rather than requiring a reduction in reactor trip setpoint. This change would be consistent with the NRC staff's guidance provided in the NRC's improved Standard Technical Specifications for Westinghouse plants (NUREG–1431, Revision 1). The maximum allowable reactor power level with inoperable safety valves would be calculated based on the recommendations of Westinghouse Nuclear Safety Advisory Letter (NSAL) 94–01. The proposed change to the Unit 1 TS 3.7.1.1 would also delete reference to 2 loop operation since 2 loop operation is not a licensed condition for either unit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change will generally incorporate the Improved Standard Technical Specification (ISTS) main steam safety valve (MSSV) requirements of NUREG–1431 into Specification 3.7.1.1 and associated Bases. The Unit 1 specification currently includes reference to 2 loop operating requirements in Action "b" and Table 3.7–2. Reference to 2 loop operation is being deleted since it is not addressed in the ISTS and is not a licensed condition for these plants. The limiting condition for operation has been modified to incorporate the ISTS wording and requires MSSV operability in accordance with Tables 3.7–1 and 3.7–2. Table 3.7–1 lists the maximum allowable power level as a function of the number of operable MSSVs per steam generator and continues to require a minimum of 2 operable MSSVs per steam generator for continued plant operation. Table 3.7–2 specifies the MSSV lift setting and tolerance for each MSSV. The valve lift setting remains unchanged along with the current tolerance of +1 percent −3 percent. The Applicability statement has not been changed since it is consistent with the ISTS requirements.

Proposed Action "a" applies with one or more inoperable MSSVs and requires that within 4 hours power must be reduced in accordance with the value specified in Table 3.7–1; otherwise, shut down. This action satisfies the same goal as the current action by restricting thermal power so that the energy transfer to the most limiting steam generator is not greater than the available relief capacity for that steam generator. Proposed Action "b" incorporates additional conservatism by specifically requiring at least 2 operable MSSVs per steam generator. This ensures that a minimum overpressure protection is available during all applicable modes of operation. Proposed Action "c" provides an exception to Specification 3.0.4 which does not allow entry into a mode where the Limiting Condition for Operation (LCO) is not met and actions require a shutdown. This exception is not addressed in the ISTS requirements; however, an exception to Specification 3.0.4 allows entry into a mode where the LCO applies in conformance with the action statements.

Proposed Surveillance Requirement 4.7.1.1 requires verification of the lift setpoint for each MSSV listed in Table 3.7–2 in accordance with the Inservice Test Program. Note (1) is applied to Surveillance Requirement 4.7.1.1 to provide clarification of the testing requirements, such that this testing is required only in Modes 1 and 2 so that the plant can enter Modes 2 and 3 where this specification applies without first performing the test. A note (2) has been applied to the lift setting in Table 3.7–2 that requires a setting corresponding to the ambient conditions of the valve at the nominal operating temperature and pressure. The ISTS does not include this note but it has been included for consistency with the current note and provides a clear reminder to test personnel of the required test conditions.

The safety valve Bases have been revised to generally incorporate the ISTS Bases which significantly improve the content and understanding of the MSSV requirements. These changes are consistent with the UFSAR [Updated Final Safety Analysis Report] design description and analysis assumptions where the MSSVs provide the required overpressure protection. The proposed changes are consistent with the regulations and provide additional assurance that the secondary side pressure remains within the bounds of the safety analyses; therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes generally incorporate the ISTS MSSV requirements to ensure adequate secondary side overpressure protection is available and properly maintained. The revised Limiting Condition for Operation (LCO) limits plant power level based on the number of operable MSSVs as stated in Table 3.7–1 and provides the valve lift settings and tolerances as shown in Table 3.7–2. The actions require a reduction in power when the number of valves is less than the full complement for each steam generator and also require at least 2 operable MSSVs per steam generator. When these requirements cannot be met a plant shutdown is required. An action also provides an exception to Specification 3.0.4 and is consistent with the exception currently provided. These actions are more conservative than the current requirements and provide additional assurance that Specification 3.7.1.1 will continue to govern the MSSV limitations in a manner consistent with the accident analyses assumptions. The revised surveillance requirement provides clearly understandable testing requirements to ensure the MSSVs are adequately monitored and will perform in accordance with the accident analysis assumptions. The proposed change does not introduce any new mode of operation or require any physical modification to the plant; therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The MSSVs ensure the ASME [American Society of Mechanical Engineers] Code, Section III requirements are maintained to limit the secondary system pressure to within 110 percent of the design pressure when passing the design steam flow. This ensures that the overpressure protection system can cope with all operational and transient events. Operation with less than the full number of MSSVs is permitted as long as thermal power is restricted to meet the ASME Code requirements. This limitation is provided in the proposed technical specifications along with operability and surveillance requirements to ensure the level of overpressure protection is maintained. MSSV operability is defined as the ability to open within the setpoint tolerances, relieve steam generator overpressure, and reseat when pressure has been reduced. MSSV operability is determined by surveillance testing in accordance with the Inservice Test program which provides assurance that the MSSVs will perform their designed safety functions to mitigate the consequences of accidents that could result in a challenge to the reactor coolant pressure boundary. The proposed change continues to ensure that the required components are properly maintained and that the assumed parameters are verified during the applicable conditions

and on a consistent basis; therefore, this change will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: July 21, 1998.

Description of amendment request: The proposed change request would permit an alternative to the requirement to perform Control Rod Drive (CRD) scram time testing with the reactor pressurized prior to resuming power operation. The change would permit: (1) scram time testing with the reactor depressurized prior to resuming operation, and (2) a second scram time test with the reactor pressure above 800 psig, prior to exceeding 40% reactor power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated; (or)

There will not be an increase in the probability of occurrence of an accident previously evaluated in the Safety Analysis Report (SAR) because the requested change provides additional assurance that the CRD System is able to perform its safety function, and therefore does not change the probability of occurrence of an accident.

There will not be an increase in the consequences of an accident previously evaluated in the Safety Analysis Report (SAR) because the requested change will ensure that the CRD System is able to perform its safety function, and therefore does not change the consequences of an accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; (or)

The requested change will not create the possibility of a new or different kind of accident from any accident previously evaluated. The first issue associated with the requested change is increased wear on the CRDs, resulting in increased buffer seal wear or failure. This wear or failure of the buffer seal would result in difficulty or inability to withdraw the rod subsequent to the depressurized scram. The safety function of the rod to insert on a scram signal, however, would be unaffected by this seal degradation. Therefore, there is no safety concern with the increased wear due to performance of the cold scram test.

The other consideration associated with the new requested change is the possible increased risk of stub tube leakage during the cold (depressurized) test. Without the download due to reactor pressure, the momentary upward loading on the CRD stub tube puts the stub tube into tension. Any flaws in the stub tube could grow and eventually result in a stub tube leak. The likelihood of flaws in the stub tubes, however, is very small, based on the extensive repair work on the stub tube surfaces performed prior to plant operation. The integrity of the stub tube repairs is verified by the 1000 pound leak test performed during every startup of the reactor. This test, therefore, poses very minimal risk of stub tube leakage.

3. Involve a significant reduction in a margin of safety.

The change will not decrease the margin of safety as defined in the basis of any Technical Specification. This is because the requested change, like the existing Technical Specification test, provides assurance that the CRD System is able to perform its safety function, and therefore does not change the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pitman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cecil O.Thomas.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: June 11, 1998

Description of amendment request: The proposed amendment would incorporate an alternative high radiation area control for Three Mile Island Nuclear Station, Unit No. 1 (TMI–1) in accordance with 10 CFR 20.1601(c). The alternative would modify Technical Specification 6.12 to allow for a conspicuously posted barricade and flashing light in individual high radiation areas that are located within large areas where no enclosure exists for locking, and no enclosure can be reasonably erected. A minor clarification to indicate that the requirement of paragraph 6.12.1.a also applies to 6.12.1.b and an editorial change were added.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment involves changes to the TMI–1 Technical Specifications, which are consistent with Regulatory Guide 8.38. This change does not involve any change to system or equipment configuration. The proposed amendment incorporates an alternative high radiation area control, which has been previously found to be acceptable by the NRC. The reliability of systems and components relied upon to prevent or mitigate the consequences of accidents previous evaluated is not degraded by the proposed changes. Therefore, this change does not increase the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. This change only involves controls for access to high radiation areas. Access to plant equipment during normal or accident conditions will not be affected by utilizing this alternate method. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed amendment is consistent with Regulatory Guide 8.38. The proposed amendment involves high radiation area access control and is not related to the margin of safety associated with any plant operation or transients. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pitman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cecil O. Thomas.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: May 20, 1998.

Description of amendment request: The proposed change would revise the Refueling Water Storage Tank (RWST) setpoint associated with Automatic Switchover to the Containment Sump. This change would require a revision to the Engineered Safety Features Actuation System Instrumentation Trip Setpoints, Table 3.3–4, Functional Unit 8.b, RWST Level—Low-Low, along with associated Bases Section 3/4.3.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not adversely affect accident initiators or precursors and does not alter the design assumptions affecting the ability of the RWST and the ECCS [Emergency Core Cooling System] pumps to mitigate the consequences of an accident.

Revising the RWST Level Low-Low setpoint has a negligible effect on the operating margin for the RWST. The revised setpoint assures that the minimum RWST volume assumed in the accident analyses is injected prior to switchover to the recirculation mode. The effect on containment flood level, equipment qualification, and pH of the containment sump and the containment spray fluid, remain within the limits assumed in the accident analyses.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

The setpoint change does not affect the function of the level monitoring channels or any function of the accident mitigation equipment associated with the RWST. No new components or physical changes are involved with this change. There are no changes to the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences in the Seabrook Station [updated final safety analysis report] UFSAR. The new setpoint will continue to initiate the automatic ECCS transfer from the injection mode to the recirculation mode and provide the alarm to alert the operator(s) to begin the manual actions necessary to complete the transfer to the recirculation mode. Manual operator action is required to complete the switchover to the recirculation mode. With the new setpoint, sufficient time remains available for the operator(s) to complete the transfer prior to receipt of the RWST EMPTY alarm and reaching the vortexing level in the RWST. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed change does not involve a significant reduction in a margin of safety.

The design bases for the RWST Level Low-Low setpoint is to ensure that the minimum volume of water to support the assumptions made in the safety analysis is injected prior to switchover and that there is adequate time available for the operators to complete the manual actions necessary to complete the switchover to the recirculation mode prior to actuation of the RWST EMPTY alarm. The minimum injection volume assumed in the accident analyses, and time required for the operator(s) to initiate and complete manual actions to complete switchover to the recirculation mode prior to receipt of the RWST EMPTY alarm, remains unaffected by this change. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Project Director: Cecil O.Thomas.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: May 21, 1998.

Description of amendment request: The proposed change would revise selected Technical Specification (TS) surveillance requirements to accommodate fuel cycles of up to 24 months for surveillances that are currently performed at each 18-month or other specified outage interval. Specifically, the following TS surveillance requirements would be revised by the proposed change: 4.1.3.3, Digital Rod Position Indication; 4.8.1.1.1.b, A.C. Sources—Operating—Transfer of 1E Bus Power from Normal to Alternate Source; 4.8.1.1.2.f.1 through 15, A.C. Sources—Operating—Emergency Diesel Generator Surveillances; 4.8.3.3, Onsite Power Distribution—Trip Circuit For Inverter I–2A; 4.8.2.1.c, d & f, D.C. Sources—Operating—125V D.C. Batteries and Chargers; 4.8.4.2.a.1) & a.2), Containment Penetration Conductor Overcurrent Protective Devices and Protective Devices for Class 1E Power Sources Connected to Non-Class 1E Circuits; 4.8.4.3, Motor Operated Valves Thermal Overload Protection. In addition, the components listed in Technical Specification 4.8.2.2, D.C. Sources—Shutdown—125V DC Batteries and Chargers, have been evaluated to support an extension in frequency to 24 months (+25%).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. The proposed changes do not alter or prevent the ability of structures, systems, or components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes are administrative in nature and do not change the level of programmatic controls or the procedural details associated with aforementioned surveillance requirements.

Changing the frequencies of the aforementioned surveillance requirements from at least once per 18 months to at least once per refueling interval does not change the basis for the frequencies. The frequencies were chosen because of the need to perform these verifications under the conditions that are normally found during a plant refueling outage, and to avoid the potential of an unplanned transient if these surveillances were conducted with the plant at power.

Equipment performance over several operating cycles was evaluated to determine the impact of extending the surveillance intervals. This evaluation included a review of surveillance results, preventative maintenance records, and the frequency and type of corrective maintenance activities, a

failure mode analysis, and consultation with the respective system engineer. The evaluations conclude that the subject SSCs are highly reliable, that presently do not exhibit time dependent failure modes of significance, and that there is no indication that the proposed extension could cause deterioration in the condition or performance of the subject SSCs. There are no known mechanisms that would significantly degrade the performance of the evaluated equipment during normal plant operation. Although there have been generic or repetitive failures of some components in the past, which may have affected the ability of the SSCs to consistently and successfully perform their safety function, those items have been resolved through design changes and rework such that they have not recurred. There have been no repetitive failures or time dependent failures that were significant in nature which would have prevented the SSCs from performing their intended safety function.

Deletion of the restriction "during effect on safe operation of the plant is given prior to conduct of a particular surveillance in a condition or mode other than shutdown.

Since the proposed changes only affect the surveillance intervals for SSCs that are used to mitigate accidents [sic], the changes do not affect the probability or consequence of a previously analyzed accident. While the proposed changes will lengthen the intervals between surveillances, the increase in intervals has been evaluated. Based on the reviews of the surveillance tests, inspections, and maintenance activities, it is concluded that there is no significant adverse impact on the reliability or availability of these SSCs.

Since there are no changes to previous accident analyses, the radiological consequences associated with these analyses remain unchanged, therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes do not alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. There are no changes to the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences in the Seabrook Station UFSAR. Existing system and component redundancy is not being changed by the proposed changes. The proposed changes have no adverse impact on component or system interactions. The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details associated with the aforementioned surveillance requirements. Therefore, since there are no changes to the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated and surveilled, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed changes do not involve a significant reduction in a margin of safety.

There is no adverse impact on equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details associated with the aforementioned surveillance requirements.

From the evaluations performed on the subject SSCs there are no indications that potential problems would be cycle-length dependent or that potential degradation would be significant for the time frame of interest and, therefore, increasing the surveillance interval to the bounding limit of 30 months (24 months plus 25%) will have little, if any, adverse affect on safety.

The proposed changes to the surveillance intervals are still consistent with the basis for the intervals and the intent and method of performing the surveillance is unchanged. Deletion of the restriction "during shutdown" where this restriction is stated will permit performance of certain maintenance and testing activities during conditions or modes other than shutdown. North Atlantic will ensure, through the implementation of appropriate administrative controls, that proper regard to their effect on safe operation of the plant is given prior to conduct of a particular surveillance in a condition or mode other than shutdown. In addition, use of the subject SSCs during normal plant operation, combined with their previous history of availability and reliability, provide assurance that the proposed changes will not affect the reliability of the subject SSCs. Thus, it is concluded that the subject SSCs would be available upon demand to mitigate the consequences of an accident and, therefore, there is no impact on the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Project Director: Cecil O. Thomas.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: July 2, 1998.

Description of amendment request: The proposed amendment would revise the updated Final Safety Analysis Report (FSAR) by changing FSAR Sections 9.7.2, "Service Water," and 9.4, "Reactor Building Closed Cooling Water," to discuss the use of various types of internal protective coatings and liners used in the piping and components of the systems. The proposed change also indicates that periodic maintenance, surveillances, and inspections would be conducted to ensure that coating or liner degradation would be promptly detected and corrected to provide reasonable assurance that the systems can perform their safety-related functions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The SWS [Service Water System] provides cooling water directly or indirectly to a multitude of mitigating and support systems such as safety injection, containment spray, and RBCCW [Reactor Building Closed-Cooling Water]. Therefore either directly or indirectly, the SWS is credited in the mitigation of virtually all analyzed operating events and accidents. However, there are no failures of the SWS which would directly initiate any of the licensing basis accidents. Therefore, the probability of occurrence of accidents previously evaluated is not increased by this activity.

The SWS is comprised of two separate and independent trains, each capable of providing the cooling capacity required for normal and accident operation. Therefore, the failure of a single heat exchanger or train will not influence the consequences of an accident. Only a common mode loss of SWS function could affect accident consequences. It can be postulated that lining material could be released as a result of the SWS response to an accident or as a result of a seismic event, resulting in heat exchanger blockage in both trains (common mode). However, the discussion below provides the basis for concluding that lining degradation will not increase the consequences of an accident.

In response to a Safety Injection Actuation Signal or a Loss of Normal Power event, the quantity of flow in safety related SWS heat exchangers may increase significantly, imparting higher loads on the pipe linings than are typically present during normal operation. In spite of this flow increase, it is considered to be much more likely that any lining degradation will occur and be detected under normal operating conditions, and will be corrected prior to the occurrence of an event of the type discussed above. SWS pump flow surveillances, performed periodically during normal operation, subject significant portions of the SWS to flow levels which equal or exceed those expected to occur during accidents. Any degraded lining material prone to be released during an

accident is expected to be released during these pump surveillances. The inspections, operating procedures, and surveillances ensure that significant lining releases will be promptly detected and investigated. In addition, SWS design features provide the system with a significant level of protection against degraded lining debris (e.g., standby spare RBCCW heat exchanger and EDG [Emergency Diesel Generator] engine cooler strainers) both during normal operation and while responding to an accident.

An evaluation was performed to assess the significance of loading on the linings due to a postulated seismic event. The importance of seismic loads depends upon their magnitude relative to normal operating loads, and on their relative frequency of occurrence. Normal operating loads include steady state flow loads as well as transients due to pump swaps and realignments for surveillances. The evaluation determined that normal operating loads are significantly greater than anticipated seismic loads concurrent with steady state flow loads. Therefore, if normal operating loads do not cause lining to become detached, it is very unlikely that a random seismic event would cause detachment. In addition, while flow loads are continuously present in most of the system and normal transients occur many times during an operating cycle, seismic events at the Millstone site are very infrequent (the repetition rate of an OBE [Operating Basis Earthquake] is hundred of years). Should normal operating loads cause lining detachment, it is much more probable that this released material will be detected, and the degraded condition corrected, prior to the occurrence of a seismic event.

Based upon these discussions, and given the random nature of lining degradation and the scrutiny with which the SWS is operated and maintained, it is not considered to be credible that the operability of both SWS trains will be simultaneously impaired by lining degradation and release.

Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the failure of a single heat exchanger or a single SWS train will not cause an accident. Only a common mode loss of SWS function could create the possibility of a previously unanalyzed accident, and this loss would not directly initiate an accident. However, for the reasons discussed above, lining degradatiion will not cause common mode failures to occur.

Therefore, the change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The margins of safety of the protective boundaries (fuel matrix/cladding, reactor coolant system pressure boundary, and containment) would not be impacted by the postulated release of lining material into the SWS. The accident analyses in the FSAR [Final Safety Analysis Report] demonstrate the performance of the protective boundaries. As discussed previously, it is not considered to be credible that lining degradation will cause a common mode loss of SWS function. Therefore, since the accident analyses credit only one SWS train, released lining would not affect accident analyses assumptions. On this basis, it is concluded that margins of safety as demonstrated by the accident analyses would not be affected by postulated lining material release.

Therefore, the change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: 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.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Deputy Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: July 17, 1998.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) surveillance requirements for the onsite emergency diesel generators (EDGs) to achieve an overall improvement in the EDGs reliability and availability. The proposed changes would modify the requirement for operability tests of an EDG when the other EDG is inoperable, delete the requirement for operability tests when one or both offsite A.C. sources are inoperable, eliminate fast loading of the EDGs except for the 18-month testing, and eliminate fast starts (15 seconds) except for once per 6 months and during the 18-month testing. These proposed changes are generally consistent with the guidance provided in Generic Letter (GL) 84–15, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability," dated July 2, 1984, and GL 93–05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation," dated September 27, 1993. Justification for deviations from the guidance provided in the GLs is provided in the licensee's submittal.

In addition, the licensee proposes to revise the wording in the TS requirements for offsite circuits to be consistent with NUREG–0212, "Standard Technical Specifications for Combustion Engineering Pressurized Water Reactors," Revision 2, fall 1980, and the guidance provided in GL 91–04, "Changes in Technical Specification Surveillance Intervals to Accommodate 24-Month Fuel Cycle," dated April 2, 1991. The associated TS Bases will be updated to reflect the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The LCOs [Limiting Conditions for Operation] for Technical Specifications [TSs] 3.8.1.1 and 3.8.1.2 will be changed to require a transmission network between offsite power and the onsite Class 1E distribution system, instead of just between offsite and the switchyard. This change, which will expand the requirement, is consistent with the current Millstone Unit No. 2 interpretation of the required distribution system. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously analyzed.

The diesel generators (DGs) supply power to the emergency busses at Millstone Unit No. 2 in the event of a loss of normal power (LNP). The emergency busses supply the vital equipment used to mitigate the consequences of design basis accidents. Therefore, the diesel generators are vital equipment used to mitigate the consequences of design basis accidents. Failure of the DGs will not cause a design basis accident to occur. However, failure of the DGs will affect the consequences of design basis accidents if a concurrent LNP occurs.

The proposed changes will revise the action requirements regarding operability testing of the DGs. The requirement to test the DGs if offsite circuits are inoperable will be deleted. An inoperable offsite circuit, by itself, will not affect the operability of the DGs. The requirement to test the remaining operable DG if one DG is inoperable will be modified. Testing will not be required provided a common cause failure is not the reason for declaring the DG inoperable. The requirement contained in the first footnote (*) to Technical Specification 3.8.1.1 to complete the test of the remaining DG will be deleted. The need to test the remaining DG will be based on the determination of a common cause failure. These changes will improve DG reliability by reducing the number of unnecessary starts and by requiring more appropriate testing of the DGs when there is a potential for common mode

failure. The proposed changes to the action requirements will not change the response of the DGs to an LNP. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously analyzed.

The requirement contained in the second footnote (**) to Technical Specification 3.8.1.1 to allow a one time extension of the allowed outage time to 7 days will be deleted. This provision is no longer necessary since the Millstone Unit No. 1 work has been completed. The statements that a successful test of the DG performed for the current Action Statements c, d, or e will satisfy the required testing of Action States a or b are no longer necessary with the proposed changes. These statements will be deleted. The removal of these items will not change the response of the DGs to an LNP. Therefore, these proposed changes will not result in a significant increase in the probability or consequences of an accident previously analyzed.

The proposed changes to the DG surveillance requirements will allow an engine prelube period before all DG tests starts, allow slow starting of the DGs, and allow the DGs to be loaded in accordance with manufacturer recommendations. This will decrease the wear on the DGs. The proposed changes will also allow adequate time for the completion of all manufacturer recommended DG engine prelube procedures. Modifying starting and loading requirements, consistent with the manufacturer recommendations, is intended to enhance diesel reliability by minimizing severe test conditions which can lead to premature failures. In addition, specifying that the 184 day DG SRs [surveillance requirements] will satisfy the 31 day DG starting and loading SRs will eliminate redundant testing. These proposed changes will minimize unnecessary DG testing while maintaining DG reliability. The proposed changes will not change the response of the DGs to an LNP. Therefore, these changes will not result in a significant increase in the probability or consequences of an accident previously analyzed.

The ASTM [American Society for Testing and Materials] standards referenced for diesel fuel oil sampling will be modified in SR 4.8.1.1.2.b. The proposed changes will replace an outdated standard, and will remove the year of issuance or revision from the ASTM standards referenced. This will allow use of the current approved ASTM standard. These proposed changes do not affect the sampling frequency or acceptance criteria of this SR. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously analyzed.

The proposed wording changes to eliminate any possible confusion when SRs 4.8.1.1.1 and 4.8.1.1.2 are referenced by SR 4.8.1.2, to state that the DGs start from standby conditions instead of ambient conditions, and to remove the requirement to perform a DG surveillance only during shutdown will not affect any technical aspect of the SRs. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously analyzed.

SRs will be added to test the DGs every 184 days at conditions similar to the current 31 day SRs. These conditions are more restrictive than the new proposed 31 day SRs. The 184 day SRs will require the diesel generators to start and obtain speed and voltage within 15 seconds and will also require the diesel generators to be synchronized, loaded, and to maintain the load for at least 60 minutes. However, it will allow gradual loading, based on manufacturer recommendations, to be used. A 184 day surveillance interval is sufficient to verify DG fast-start capability, and is consistent with GL [Generic Letter] 84–15, GL 93–05, and NUREG–1432. Therefore, the posed changes will not result in a significant increase in the probability or consequences of an accident previously analyzed.

The list of SRs, contained in SR 4.8.1.2, that do not have to be performed for the operable diesel generator in Modes 5 and 6 will be expanded to take into account the 184 day DG SR that will be added. This proposed change will exclude the one operable DG from being loaded when the 184 day SR is performed. This is consistent with the current SR which excludes performance of SR 4.8.1.1.2.a.3. Loading the one required operable diesel generator could subject this diesel generator to grid faults which could adversely affect its ability to perform its safety function. Therefore, the proposed change will not result in a significant increase in the probability or consequences of an accident previously analyzed.

The Bases of these Technical Specifications will be modified and expanded to discuss the proposed changes, and to provide guidance to ensure the requirements are correctly applied. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously analyzed.

These proposed changes do not alter the way any structure, system, or component functions. The intent of the proposed changes is to improve the reliability of the DGs by eliminating unnecessary surveillance testing and allowing most of the surveillance testing to be performed in accordance with the recommendations of the manufacturer. There will be no adverse effect on equipment important to safety. The response of the DGs to an LNP, as described in the Millstone Unit No. 2 FSAR [Final Safety Analysis Report], will remain the same. There will be no effect on any of the design basis accidents previously evaluated. Therefore, this License Amendment Request will not result in a significance increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of an accident from any accident previously evaluated.

The proposed changes do not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in the margin of safety.

This License Amendment Request proposes to modify the LCOs for electrical power sources, DG surveillance requirements and the required actions for inoperable electrical power sources contained in the Millstone Unit No. 2 Technical Specifications. The proposed changes will revise LCO wording to be consistent with the required offsite power distribution requirements and improve DG reliability by minimizing excessive wear of the DGs, and changing the starting and loading requirements of the DGs, in accordance with manufacturer recommendations, during most DG surveillance and operability tests. Improving the reliability of the DGs will help ensure the DGs will respond to an LNP as described in the Millstone Unit No. 2 FSAR. Therefore, this License Amendment Request will not result in a significant reduction in the margin of safety as defined in the Bases for the Technical Specifications addressed by the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: 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.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Deputy Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: July 21, 1998.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) by changing various Reactor Protection System (RPS) and Engineered Safety Features Actuation System (ESFAS) setpoints and allowable values; correct the specified maximum reactor power level limited by the high power level RPS trip; add new TS and requirements associated with the automatic isolation of steam generator blowdown; and make several editorial and changes to correct various errors

and to provide needed clarification. The applicable TS Bases sections would also be changed to reflect the proposed changes, correct previous errors identified during the licensee's review of the TS, eliminate redundant information, and expand the TS Bases to discuss the new requirements for the automatic isolation of the steam generator blowdown.

Specifically, the proposed changes would modify TS 2.1.1, "Safety Limits—Reactor Core," TS 2.2.1, "Limiting Safety System Settings—Reactor Trip Setpoints," TS 3.3.1.1, "Instrumentation—Reactor Protective Instrumentation" TS 3.3.2.1, "Instrumentation—Engineered Safety Features Actuation System Instrumentation," and would add a new TS 3.7.1.8, "Plant Systems—Steam Generator Blowdown Isolation Valves." As previously noted, the applicable TS Bases sections will be updated to reflect the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to correct the maximum reactor power level from 112% to 111.6% is consistent with the maximum high power trip setpoint of 106.6%, plus 5% uncertainty, currently used in the safety analyses. This does not change the Technical Specification required high power reactor trip setpoint. There will be no adverse effect on any design basis accident previously evaluated or on any equipment important to safety. Therefore, the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the trip setpoints and allowable values for the Reactor Protection System (RPS) trips on high pressurizer pressure, high containment pressure, low steam generator pressure, and low steam generator level are the result of revisions to the instrument loop uncertainty and setpoint calculations. These calculations were revised to incorporate calculation methodology changes, analytical limit changes, correct errors identified, and to include the effects of a harsh environment (pressure, temperature, and radiation), where appropriate. The proposed setpoints and allowable values will ensure a reactor trip signal is generated at, or before the analytical limits used in the respective accident analyses are reached. There will be no adverse effect on any design basis accident previously evaluated or on any equipment important to safety. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the trip setpoints and allowable values for the Engineered Safety Features Actuation System (ESFAS) actuations on low pressurizer pressure, high containment pressure, low steam generator pressure, low refueling water storage tank level, and low steam generator level are the result of revisions to the instrument loop uncertainty and setpoint calculations. These changes were revised to incorporate calculation methodology changes, analytical limit changes, correct errors identified, and to include the effects of a harsh environment (pressure, temperature, and radiation), where appropriate. The proposed setpoints and allowable values will ensure an ESF [engineered safety feature] actuation signal is generated at, or before the analytical limits used in the respective accident analyses are reached. There will be no adverse effect on any design basis accident previously evaluated or on any equipment important to safety. Therefore, the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to add Technical Specification requirements for the steam generator blowdown isolation valves will provide additional assurance that the automatic isolation of steam generator blowdown will occur as assumed in the loss of main feedwater accident analysis. There will be no adverse effect on any design basis accident previously evaluated or on any equipment important to safety. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the value of steam generator pressure when the steam generator low pressure reactor trip can be bypassed (from 780 psia to 800 psia) will reduce the range of plant operation when this trip is required to be available. However, this will not affect the range of plant operation when this RPS trip is required to be operable. This RPS trip is required in Modes 1 and 2. The expected steam generator pressure during a reactor startup (entry into Mode 2) is approximately 900 psia, which corresponds to a Reactor Coolant System (RCS) temperature of approximately 532°F. The proposed change will require the bypass to be automatically removed prior to exceeding a steam generator pressure of 800 psia. There will be no adverse effect on any design basis accident previously evaluated or on any equipment important to safety. Therefore, the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the value of pressurizer pressure (from 1750 psia to 1850 psia) when the pressurizer low pressure ESF actuations (SIAS, CIAS, and EBFAS) [safety injection actuation system, containment isolation actuation system, and enclosure building filtration actuation system] can be blocked will reduce the range of plant operation when these functions are required to be available. However, since the plant would normally be in Mode 3 when pressurizer pressure is in this range, automatic actuation of these ESF functions on high containment pressure, as well as manual actuation, is required to be operable. In addition, the plant would not normally maintain pressurizer pressure between 1750 psia and 1850 psia. Therefore, since automatic actuation of these ESF functions on high containment pressure, as well as manual actuation, should be operable, and the time the plant will operate between 1750 psia and 1850 psia is small, the ESFAS will continue to function as before. There will be no adverse effect on any design basis accident previously evaluated or on any equipment important to safety. Therefore, the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the value of steam generator pressure (from 600 psia to 700 psia) when the steam generator low pressure ESF actuation (main steam line isolation) can be blocked will reduce the range of plant operation when this function is required to be available. However, since the plant would be in Mode 3 when steam generator pressure is in this range (RCS temperature of approximately 486°F to 503°F), automatic actuation of this ESF function on high containment pressure, as well as manual actuation, is required to be operable. In addition, the plant would not normally maintain steam generator pressure between 600 psia and 700 psia. Therefore, since automatic actuation of this ESF function on high containment pressure, as well as manual actuation, should be operable, and the time the plant will operate between 600 psia and 700 psia is small, the ESFAS will continue to function as before. There will be no adverse effect on any design basis accident previously evaluated or on any equipment important to safety. Therefore, the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The minor editorial and non-technical changes to correct spelling errors, correct a capitalization error, add page amendment numbers, add the specific plant parameter (steam generator pressure) to use if an RPS or ESF function can be bypassed, change the value of the parameter (pressurizer pressure) used in action statements, and a "[less than or equal to]" symbol, change "value" to "setpoint," and update the index will have no effect on plant operation. These changes will not result in any technical changes to the Millstone Unit No. 2 Technical Specifications. There will be no adverse effect on any design basis accident previously evaluated or on any equipment important to safety. Therefore, the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Technical Specification Bases will incorporate the RPS and ESFAS setpoint changes, correct errors, eliminate redundant information, and expand the Bases to discuss the new requirements for steam generator blowdown isolation. These changes will have no effect on equipment operation. There will be no adverse effect on any design basis accident

previously evaluated or on any equipment important to safety. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes have no adverse effect on any of the design basis accidents previously evaluated and have no adverse effect on how the RPS and ESFAS function to mitigate the consequences of design basis accidents. Therefore, the license amendment request does not impact the probability of an accident previously evaluated nor does it involve a significant increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will correct the maximum reactor power level specified; change RPS trip setpoints, allowable values, and bypass setpoints; change ESFAS trip setpoints, allowable values, and block setpoint changes; add a new Technical Specification and additional requirements associated with the automatic isolation of steam generator blowdown; and make various minor editorial and non-technical changes. There will be no adverse effect on equipment important to safety. The RPS and ESFAS will continue to function as designed to mitigate the consequences of design basis accidents. Therefore, there will be no significant reduction of the margin of safety as defined in the Bases for the Technical Specifications affected by the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: 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.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Deputy Director: Phillip F. McKee.

Pennsylvania Power and Light Company, Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: June 19, 1998.

Description of amendment request: The amendment to Unit 1 Technical Specifications (TS) involves the addition of a new section entitled "Oscillation Power Range Monitoring (OPRM) Instrumentation" and revisions to Section 3.4.1 "Recirculation Loops Operating" to remove the specifications related to thermal power stability which will not be required after the installation of the OPRM instrumentation. Unit 1 is currently operating under Interim Corrective Actions (ICAs) defined in TS 3.4.1 that specify restrictions on plant operation and actions by operators in response to instability events. The OPRM system provides an automatic long-term solution to the instability issue and eases the burden on the operator.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposal does not involve an increase in the probability or consequences of an accident previously evaluated.

The OPRM most directly affects the APRM and LPRM portions of the Power Range Neutron Monitoring system. Its installation does not affect the operation of these sub-systems. None of the accidents or equipment malfunctions affected by these sub-systems are affected by the presence or operation of the OPRM.

The APRM channels provide the primary indication of neutron flux within the core and respond almost instantaneously to neutron flux changes. The APRM Fixed Neutron Flux-High function is capable of generating a trip signal to prevent fuel damage or excessive reactor pressure. For the ASME overpressurization protection analysis in FSAR Chapter 5, the APRM Fixed Neutron Flux-High function is assumed to terminate the main steam isolation valve closure event. The high flux trip, along with the safety/relief valves, limit the peak reactor pressure vessel pressure to less than the ASME Code limits. The control rod drop accident (CRDA) analysis in Chapter 15 takes credit for the APRM Fixed Neutron Flux-High function to terminate the CRDA. The Recirculation Flow Controller Failure event (pump runup) is also terminated by the high neutron flux trip. The APRM Fixed Neutron Flux-High function is required to be OPERABLE in MODE 1 where the potential consequences of the analyzed transients could result in the Safety Limits (e.g., MCPR and Reactor pressure) being exceeded.

The installation of the OPRM equipment does not increase the consequences of a malfunction of equipment important to safety. The APRM and RPS systems are designed to fail in a tripped (fail safe) condition; the OPRM will have no affect on the consequence of the failure of either system. An inoperative trip signal is received by the RPS any time an APRM mode switch is moved to any position other than Operate, an APRM module is unplugged, the electronic operating voltage is low, or the APRM has too few LPRM inputs. These functions are not specifically credited in the accident analysis, but are retained for the RPS as required by the NRC approved licensing basis.

The OPRM allows operation under current operating conditions presently restricted by the current Technical Specifications by providing automatic suppression functions in the area of concern in the event an instability occurs. The consequences of any accident or equipment malfunction are not increased by operating under those conditions. Although protected by the OPRM from thermal-hydraulic core instabilities above 30% core power, operation under natural core recirculation conditions is not allowed. No accidents or transients of a type not analyzed in the FSAR are created by operating under these conditions with the protection of the OPRM system.

This change does not increase the probability of an accident as previously evaluated. The OPRM is designed and installed to not degrade the existing APRM, LPRM, and RPS systems. These systems will still perform all of their intended functions. The new equipment is tested and installed to the same or more restrictive environmental and seismic envelopes as the existing systems. The new equipment has been designed and tested to the electromagnetic interference (EMI) requirements of Reference 2, which assures correct operation of the existing equipment. The new system has been designed to single failure criteria and is electrically isolated from equipment of different electrical divisions and from non-1E equipment. The electrical loading is within the capability of the existing power sources and the heat loads are within the capability of existing cooling systems. The OPRM allows operation under operating conditions presently forbidden or restricted by the current Technical Specifications. No other transient or accident analysis assumes these operating restrictions.

Based upon the analysis presented above, PP&L concludes that the proposed action does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposal does not create the probability of a new or different type of accident from any accident previously evaluated. The OPRM system is a monitoring and accident mitigation system that cannot create the possibility for an accident.

The OPRM will allow operation in conditions currently restricted by the current Technical Specifications. Although protected by the OPRM from thermal-hydraulic core instabilities above 30% core power, operation under natural circulation conditions is not allowed. No accidents or transients of a type not analyzed in the FSAR are created by operating under these conditions with the protection of the OPRM system. No new failure modes of either the new OPRM equipment or of the existing APRM equipment have been introduced. Quality software design, testing, implementation and module self-health testing provides assurance that no new equipment malfunctions due to software errors are created. The possibility of an accident of a new or different type than any evaluated previously is not created.

The new OPRM equipment is designed and installed to the same system requirements as the existing APRM equipment and is designed and tested to have no impact on the existing functions of the APRM system. Appropriate isolation is provided where new interconnections between redundant separation groups are formed. The OPRM modules have been designed and tested to assure that no new failure modes have been introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

There has been no reduction in the margin of safety as defined in the basis for the Technical Specifications. The OPRM system does not negatively impact the existing APRM system. As a result, the margins in the Technical Specifications for the APRM system are not impacted by this addition.

Current operation under the ICAs provides an acceptable margin of safety in the event of an instability event as the result of preventive actions and Technical Specification controlled response by the control room operators. The OPRM system provides an increase in the reliability of the protection of the margin of safety by providing automatic protection of the MCPR safety limit, while the protection burden is significantly reduced for the control room operators. This protection is demonstrated as described above, and in the NRC reviewed and approved Topical Reports NEDO–32465–A and CENPD–400–P–A.

Replacement of the ICA operating restrictions from Technical Specifications with the OPRM system does not affect the margin of safety associated with any other system or fuel design parameter.

Therefore, the change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: July 6, 1998

Description of amendment request: The proposed Technical Specification (TS) changes represent revisions to the Radiological Effluent Technical Specification (RETS) Section 3.5.b.1, "Main Condenser Steam Jet Air Ejector (SJAE)" and Table 3.10–1 "Radiation Monitoring Systems that Initiate and/or Isolate Systems" including associated TS Bases. The existing RETS for radiation monitoring instrumentation systems that initiate and/or isolate systems will be changed by adding Allowable Outage Times (AOTs) and incorporating editorial and administrative changes to clarify requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The inherent redundancy and reliability of the protective instrumentation trip systems ensure that the consequences of an accident are not significantly increased. In addition, the restrictive Allowable Outage Time (AOT) interval limits the probability of the protective instrument channel being unavailable and an accident requiring its function from occurring simultaneously. The requirement that the associated trip function maintains trip capability for selected instrumentation ensures that the protective instrumentation response will occur such that the consequences of an accident are not different from those previously evaluated. The proposed changes provide AOTs for test and repair of plant instrumentation. The changes do not introduce any new modes of plant operation, make any physical changes, or alter any operational setpoints. Therefore, the changes do not degrade the performance of any safety system assumed to function in the accident analysis. Consequently, there is no effect on the probability of occurrence of an accident.

Regarding the consequences of an accident, the GE Licensing Topical Reports (References 1 and 2) [GE Topical Report NEDC–31677P–A, "Technical Specification Improvement Analysis for BWR Isolation Actuation Instrumentation," July 1990 and GE Topical Report GENE–770–06–1–A, "Bases for Changes to Surveillance Test Intervals and Allowed Out-Of-Service Times for Selected Instrumentation Technical Specifications," December 1992] conclude that the proposed AOT for the safety system instrumentation results in an insignificant change in the core damage frequency. The AOTs result in a slight increase in the unavailability of the safety functions. The overall effect on the probability of an accident is negligible. The NRC concurred in their SERs [safety evaluation reports] (References 3 and 4) [NRC Safety Evaluation Report, letter from Charles E. Rossi, NRC to S.D. Floyd, BWR Owners Group, "General Electric Company Topical Report NEDC–31677P, Technical Specification Improvement Analysis for BWR Isolation Actuation Instrumentation", June 18, 1990 and NRC Safety Evaluation Report, letter from Charles E. Rossi, NRC to R.D. Binz, BWR Owners Group, "General Electric Company Topical Report GENE–770–06–1, Bases for Changes to Surveillance Test Intervals and Allowed Out-Of-Service Times for Selected Instrumentation Technical Specifications," July 21, 1992] with this conclusion. Consequently, there is not a significant increase in the consequences of an accident.

Since the editorial and administrative items do not alter the meaning or intent of any requirements, they do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the protective instrumentation trip system specifications do not create the possibility of a new or different kind of accident because they do not introduce any new operational modes or physical modifications to the plant.

For systems with only one channel (Main Control Room Ventilation) or two-out-of-two logic system (SJAE Radiation Monitors) a six-hour surveillance AOT is being proposed and a repair time AOT is not allowed. This is consistent with GE Topical Reports referenced in current TS Bases 4.2 and STS [Standard Technical Specifications] and therefore, will not introduce a new or different kind of accident than previously evaluated.

Since the editorial and administrative items do not alter plant configurations or operating modes, they do not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The protective instrumentation surveillance requirements provide verification of the operability of the trip system instrumentation channels. In addition, the redundant channel that monitors the identical Trip Function maintains trip capability for the relatively short duration of the test or repair time period. This ensures that protective

instrumentation reliability is maintained. The proposed change provides for a specific time period to perform required surveillances on instrument channels without trips present in associated trip systems. This time allotment tends to enhance the margin of safety by decreasing the probability of unnecessary challenges to safety systems and inadvertent plant transients. The evaluations presented in the referenced GE Licensing Topical Reports concluded that the overall effect of the proposed changes provides a net increase in plant safety.

The only action resulting from the proposed changes to RETS is to add AOTs for selected instrumentation. Spurious signals during testing could initiate plant transients. These transients are bounded by the current transient analysis. These tests do not subject the instruments to any conditions beyond their design specifications and are performed in accordance with approved testing standards. This testing ensures equipment operability by identifying degraded conditions, initiating corrective action and properly retesting them. Therefore, the proposed RETS do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Project Director: S. Singh Bajwa, Director

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: June 25, 1998.

Description of amendment request: The proposed changes affect Technical Specification (TS) Surveillance Requirement 4.5.1.d.2.b by deleting the requirement to perform in-situ functional testing of the Automatic Depressurization System (ADS) safety relief valves (SRVs) during startup testing activities. The proposed changes also affect TS Surveillance Requirement 4.4.2.1.b such that the 18-month channel calibration for the SRV acoustic monitors will no longer require an exception to the provisions of TS 4.0.4, nor adjustments to SRV full open noise levels.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change does not involve any physical changes to plant structures, systems or components (SSC). The ADS will continue to function as designed. The ADS is an Emergency Core Cooling System (ECCS) designed to mitigate the consequences of an accident, and therefore, can not contribute to the initiation of any accident. The ADS utilizes five of the 14 main steam line SRVs as the primary method for depressurizing the reactor pressure vessel to permit low pressure core cooling capability in the event of a small break Loss-of-Coolant-Accident (LOCA) if the high pressure cooling systems (i.e., High Pressure Cooling Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) systems) fail to maintain adequate reactor vessel water level.

Deleting the TS surveillance requirements to perform the in-situ testing of the ADS/SRVs during startup, as proposed, should reduce the probability of an inadvertent opening of an SRV as discussed in Section 15.1.4 of the Hope Creek [Updated Final Safety Analysis Report] UFSAR since deleting this testing requirement will eliminate a known initiator of SRV pilot leakage and subsequent erosion. This proposed TS change will have a tendency to increase, rather than decrease, the reliability of the ADS/SRVs by eliminating the in-situ ADS functional startup testing. The probability of the ADS/SRVs to open on demand has been demonstrated to be extremely high and is not measurably improved through the in-situ ADS functional startup testing.

Using the provisions of 10CFR50.59, PSE&G will establish a method for performing SRV acoustic monitor channel calibration that does not require reactor steam pressure or SRV opening. This testing method will comply with the current TS definition of CHANNEL CALIBRATION. Since the notes associated with TS Surveillance Requirement 4.4.2.1 (providing a compliance exception to the provisions of TS 4.0.4 to allow for proper reactor steam pressure to perform the test and an allowance for noise level adjustments) are no longer needed, their removal will not affect plant operation or testing and will not involve an increase in the probability or consequences of an accident previously evaluated.

This proposed TS change will not increase the probability of occurrence of a malfunction of any plant equipment important to safety. Alternate testing methods at Hope Creek and at the offsite test facility adequately demonstrate proper ADS valve operation and assure that the valves will continue to function as designed. Existing surveillance testing and inspections of the ADS/SRVs at Hope Creek verify that the ADS initiation logic, solenoid valve operation, pneumatic gas supply integrity and air operator assembly (including pilot rod) will operate as designed. Offsite testing verifies pilot disc operation, setpoint calibration, stroke time and main valve disc operation.

Deleting the in-situ testing requirement, as proposed, will reduce the probability of increasing SRV leakage, which should reduce the probability of an inadvertent opening of an SRV. Therefore, any SRV pilot leakage that can be eliminated would reduce the probability of occurrence of a malfunction of that SRV. Deleting the ADS/SRV in-situ functional test will in no way increase any consequences of a malfunction of plant equipment important to safety. The consequences of a malfunction of an ADS/SRV as discussed in the Hope Creek UFSAR remain unchanged.

In addition, eliminating a known initiator of SRV leakage, as proposed in this TS change, would help reduce operator workarounds in the form of suppression pool cooling and letdown operation activities. As a result, this will reduce the unnecessary operation of the Residual Heat Removal (RHR) and its supporting systems.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not involve any physical changes to plant SSC. The design and operation of the ADS/SRVs are not changed from that currently described in the UFSAR. The ADS will continue to function as designed to mitigate the consequences of an accident. No changes of any kind are being made to the valves, auxiliary components or ADS logic. Deleting the requirement to perform the ADS in-situ functional test during plant startup as proposed in this TS change request reduces the likelihood of an SRV developing a leak and degrading throughout the subsequent operating cycle. Therefore, there is no possibility that implementing this proposed TS change would create a different type of malfunction to the ADS/SRVs than any previously evaluated.

Eliminating the requirement to perform the in-situ testing of the ADS/SRVs during startup activities does not create a new or different type of accident than any previously evaluated. There is no accident scenario associated with testing the ADS/SRVs other than the inadvertent opening of a relief valve, which is currently discussed in Section 15.1.4 of the UFSAR. The proposed TS changes do not alter the conclusions described in the UFSAR regarding an inadvertent opening of an SRV. No new or different type of accident will be created as a result of these proposed changes.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

Using the provisions of 10CFR50.59, PSE&G will establish a method for performing SRV acoustic monitor channel calibration that does not require reactor

steam pressure or SRV opening. This testing method will comply with the current TS definition of CHANNEL CALIBRATION. Since the notes associated with TS Surveillance Requirement 4.4.2.1 (providing a compliance exception to the provisions of TS 4.0.4 to allow for proper reactor steam pressure to perform the test and an allowance to perform noise level adjustments) are no longer needed, their removal will not affect plant operation or testing and will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed TS change involves deleting the requirement to perform in-situ functional testing of the ADS/SRVs during startup activities. This testing imposes an unnecessary challenge on the ADS/SRVs and has been linked to SRV degradation (e.g., pilot valve and/or main valve leakage). This proposed TS change should reduce SRV leakage and improve ADS/SRV reliability by reducing the potential for spurious SRV actuation. Since ADS operability can be readily demonstrated with extremely high confidence by the existing surveillance tests and inspections performed for the ADS, there will be no reduction in any margin of safety resulting from this proposed TS change. Therefore, the proposed TS change does not involve a significant reduction in a margin of safety.

Using the provisions of 10CFR50.59, PSE&G will establish a method for performing SRV acoustic monitor channel calibration that does not require reactor steam pressure or SRV opening. This testing method will comply with the current TS definition of CHANNEL CALIBRATION. Since the notes associated with TS Surveillance Requirement 4.4.2.1 (providing a compliance exception to the provisions of TS 4.0.4 to allow for proper reactor steam pressure to perform the test and an allowance to perform noise level adjustments) are no longer needed, their removal will not affect plant operation or testing and will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: Robert A. Capra.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: February 18, 1998.

Description of amendment request: The proposed amendment would revise the Watts Bar Nuclear Plant (WBN) Technical Specifications (TS) and associated Bases to address a new condition (Condition B) and associated actions in which one train (consisting of two valves) of Steam Generator Atmospheric Dump Valves (ADVs), although functional, would be considered technically INOPERABLE in the event of one train of the auxiliary control air system (ACAS) was out of service. The action required for the new condition is to restore the ADV lines to OPERABLE status within 72 hours. In addition, the proposed amendment would make a correction to the required action for Condition B (new Condition C) to clarify that the required action for two or more inoperable ADV lines (with the exception of new Condition B) is to restore all but one ADV line to operable status. The current Required Action for Condition B incorrectly states that only one ADV line must be restored to operable status.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The addition of the 72 hour completion time and clarification to existing TS do not increase the probability of an accident previously evaluated since these changes do not result in hardware or procedural changes which will affect probability of occurrence of an accident. The probability of an accident occurring during the 72 hour period as compared to the 24 hour completion time currently in the TS remains small. Further, addition of the 72 hour completion time and clarification to existing TS does not increase the consequences of an accident previously evaluated since sufficient equipment and procedures remain available to mitigate accidents previously evaluated. With two ADVs inoperable under this LCO, two ADVs remain in service. As indicated in the Applicable Safety Analysis of the TS Basis, two valves are adequate to cool the unit to the RHR [residual heat removal] entry conditions subsequent to accidents accompanied by a loss of offsite power. In addition, as indicated in the background discussion of the Bases of 3.7.4, the ADVs can be operated by use of a bottled nitrogen system designed to open the valves in the event of loss of normal and emergency air supplies. The valves may also be operated manually by using the valve hand wheels. Consequently, the two inoperable ADVs under this LCO are still expected to remain functional and could be placed in service and used to cool the steam generators, if necessary, in the event of an accident. Based on the above, the addition of the 72 hour completion time and clarifications to existing TS in accordance with this proposed amendment do not significantly increase the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The addition of the 72 hour completion time and clarifications to existing TS does not cause the initiation of any accident nor create any new credible limiting failure for safety-related systems and components. The change does not result in an event previously deemed incredible being made credible. As such, it does not create the possibility of an accident different than any evaluated in the FSAR [Final Safety Analysis Report]. The change has an insignificant effect on the ability of the safety-related systems to perform their intended safety functions. Although the period during which a safety-related function (ACAS air supply) is assumed inoperable is extended from 24 to 72 hours, sufficient remaining equipment (two ADVs supplied by the opposite train ACAS) is available to mitigate the limiting [steam generator tube rupture] SGTR accident, assuming no single failure occurs. Also, additional redundant and diverse equipment (normal control air, emergency bottled nitrogen, and the valve hand wheels) is available and expected to remain functional to ensure the ADVs accomplish their function following an accident. The change does not create failure modes that could adversely impact safety-related equipment. Therefore, the change will not create the possibility of a malfunction of equipment important to safety different than previously evaluated in the FSAR. Thus, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The TS currently allow two or more ADVs to be out of service for 24 hours, based on low probability of an event occurring during the period which would require use of the ADVs, and based on availability of the steam dump valves and the MSSVs [main steam safety valves]. Providing a 72 hour completion time specifically for loss of two ADV valves due to loss on one train of ACAS to the ADVs does not significantly reduce the margin of safety since the probability of an event occurring during the 72 hour period is still small, and the capability exists to use the inoperable ADVs by manually operating the valves using the valve hand wheels, or by connecting the valve nitrogen bottle system, which was designed to operate the valves upon loss of air. In addition, the MSSVs, and the condenser steam dump valves would normally also be available. Thus, the proposed change does not significantly reduce the margin of safety.

Further, the NRC staff notes that the proposed change to the TS action statement for two or more ADV lines inoperable to

require restoration of all but one of the four ADV lines, instead of the previous requirement to restore only one ADV line to operable status, is more restrictive and more conservative than the action statement as currently written. The change also makes the action statement consistent with the existing TS Bases in Section B 3.7.4, Action B.1. Accordingly, the staff proposes to find that this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, and does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review and the staff's additional assessment as provided above, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: May 6, 1998.

Description of amendment request: The proposed amendment would modify the Watts Bar Nuclear Plant (WBN) Technical Specifications (TSs) by revising the allowed enrichment of fuel stored in the new fuel storage racks from 4.3 to 5.0 weight percent uranium-235 (U–235). The revision also places limitations on fuel storage locations that may be utilized in the storage racks and provides additional limits on k(effective) when flooded with unborated water.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the allowed enrichment of new fuel stored in the new fuel storage racks does not change the criticality potential with the proposed fuel arrangement requirements for the storage racks. The potential k_{eff} values are maintained the same as the current TS requirements. In addition, the storage racks are not modified and the processes for loading and unloading fuel in these racks and the controls for these racks remain the same except for the storage limitations dictated by the criticality analysis. Additional controls are required with appropriate verification to assure the fuel is stored within the analysis assumptions. Handling procedures contain additional steps to specifically verify prohibited cells remain empty after fuel movement. This verification assures that the probability of a criticality event is not increased by the enrichment change. Since the k_{eff} limits and operating processes are unchanged by the proposed revision, there is no increase in the probability of an accident previously evaluated. Likewise, there is no impact to the consequences of an accident or increase in offsite dose limits as a result of the proposed TS change because the criticality requirements are unchanged and plant equipment will be utilized and operated without change considering the fuel storage location limits imposed by this request.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, the plant equipment and operating processes will not be altered by the proposed TS change with the exception of allowed fuel storage locations in the new fuel storage racks. The limitations on acceptable fuel storage locations in the racks ensure that the k(effective) limits are maintained at the same limits as currently required. TVA has not postulated a criticality event at WBN for the spent or new fuel storage locations because the design of the associated storage racks, potential moderation, and TS allowable fuel enrichments do not support the potential for this condition. Therefore, this change does not create the potential for a new accident from any previously analyzed.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed TS change maintains the existing requirements for criticality by utilizing limited storage locations in the new fuel pit storage racks. There is no change to operating practices associated with the use and control of these racks except for the storage limitations. For these reasons, there will be no reduction in the margin [of] the safety as a result of implementing the proposed TS change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: July 13, 1998.

Description of amendment request: The proposed license amendment would revise Perry Nuclear Power Plant Technical Specification 3.4.4, "Safety/Relief Valves (S/RVs)," by increasing the present [plus or minus] 1% tolerance on the safety mode lift setpoint for the safety/relief valves to [plus or minus] 3%. This change would be performed in accordance with General Electric Topical Report NEDC–31753P, "BWROG In-Service Pressure Relief Technical Specification Revision Licensing Topical Report."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously identified.

The proposed change allows an increase in the as-found safety relief valve (SRV) safety mode setpoint tolerance, determined by test after the valves have been removed from service, from [plus or minus] 1% to [plus or minus] 3%. The proposed change does not alter the Technical Specification requirements on the nominal SRV safety mode lift setpoints, the SRV relief mode setpoints, the required frequency for the SRV lift setpoint tests, or the number of SRVs required to be operable. This change does not involve physical changes to the SRVs, nor does it change the operating characteristics or safety function of the SRVs.

Consistent with current requirements, this change continues to require that the SRVs be adjusted to within [plus or minus] 1% of their nominal lift setpoints following testing. This change does not change the behavior and operation of any SRV and therefore has no significant impact to reactor operation. It also has no significant impact on response to any perturbation of reactor operation including transients and accidents previously analyzed in the Updated Safety Analysis Report. In addition, this change does not change SRV actuation. Therefore, this change will not increase the probability of an accident previously evaluated.

Generic considerations related to the change in setpoint tolerance were addressed

in NEDC–31753P, "BWROG In-Service Pressure Relief Technical Specification Revision Licensing Topical Report," and were reviewed and approved by the NRC. The plant specific evaluations, required by the NRC's Safety Evaluation for NEDC–31753P and performed to support this proposed change, are contained in NEDC–32307P, "Safety Review for PNPP Safety/Relief Valve Setpoint Tolerance Relaxation/Out-of-Service Analyses," dated May 1994. These analyses and evaluations show that there is adequate margin to the design core thermal limits and to the reactor vessel pressure limits using a [plus or minus] 3% SRV setpoint tolerance. They also show that operation of the high pressure injection systems will not be adversely affected; and the containment response from a loss of coolant accident will be acceptable.

(2) The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to allow an increase in the SRV safety mode setpoint tolerance from [plus or minus] 1% to [plus or minus] 3% does not alter the nominal SRV lift setpoints or the number of SRVs required to be operable. This change does not involve physical changes to the SRVs, nor does it change the operating characteristics or the safety function of the SRVs. The proposed change does not involve a physical alteration of the plant. No new or different equipment is being installed. The proposed change does not impact core reactivity nor the manipulation of fuel bundles. There is no alteration to the parameters within which the plant is normally operated. As a result no new failure modes are being introduced. There are no changes in the methods governing normal plant operation, nor are the methods utilized to respond to plant transients altered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed change will not involve a significant reduction in the margin of safety.

The margin of safety is established through the design of the plant structures, systems, and components, the parameters within which the plant is operated, and the establishment of the setpoints for the actuation of equipment relied upon to respond to an event. The proposed change does not significantly impact the condition or performance of structures, systems, and components relied upon for accident mitigation. The proposed change does not significantly impact any safety analysis assumptions or results.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Ronald R. Bellamy (Acting).

Previously Published Notices of Consideration of Issuance of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: July 8, 1998.

Description of amendment request: The proposed amendments would allow temporary noncompliance with the Penetration Room Ventilation System air flow surveillance requirements of Technical Specification 4.5.4.1.b.1 until modifications can be completed to support testing in accordance with ANSI Standard N510–1975, as required by the Technical Specifications.

Date of publication of individual notice in **Federal Register**: July 16, 1998 (63 FR 38433).

Expiration date of individual notice: August 17, 1998.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: June 18, 1998.

Brief description of amendment: Amend the Crystal River Unit 3 (CR3) Improved Technical Specifications to allow operation with a number of indications previously identified as tube end anomalies and multiple tube end anomalies in the CR3 Once Through Steam Generator tubes.

Date of publication of individual notice in the **Federal Register**: June 30, 1998 (63 FR 35615).

Expiration date of individual notice: July 15, 1998.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: June 19, 1998 (supersedes April 11, 1997, application), as supplemented July 1, 1998, and information provided in a letter of May 5, 1997.

Brief description of amendment request: The proposed amendment would revise Section 3.6.C, Coolant Chemistry, and 3/4.17.B, Control Room Emergency Filtration System, of the Technical Specifications (TS), Appendix A of the Operating License for the Monticello Nuclear Generating Plant. The changes were proposed to establish TS requirements consistent with modified analysis inputs used for the evaluation of the radiological consequences of the main steam line break accident. This amendment request was originally noticed in the **Federal Register** on May 6, 1998 (63 FR 25115). On June 19, 1998, supplemented July 1, 1998, the licensee submitted an application that superseded in its entirety the licensee's previous submittal dated April 11, 1997.

Date of publication of individual notice in **Federal Register**: July 28, 1998 (63 FR 40321).

Expiration date of individual notice: August 27, 1998.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: February 24 1998, as supplemented by letter dated May 27, 1998.

Brief description of amendment: The amendment would support a modification to the Callaway Plant, Unit 1 to increase the storage capacity of the spent fuel pool.

Date of individual notice in **Federal Register**: July 13, 1998 (63 FR 37598).

Expiration date of individual notice: August 12, 1998.

Local Public Document Room location: University of Missouri-Columbia, Elmer Ellis Library, Columbia, Missouri 65201–5149.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 20, 1998, as supplemented by letter dated May 28, 1998.

Brief description of amendment: The amendment would support a modification to the Wolf Creek Nuclear Generating Station, Unit 1 to increase the storage capacity of the spent fuel pool.

Date of individual notice in **Federal Register**: July 13, 1998 (63 FR 37601).

Expiration date of individual notice: August 12, 1998.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application 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, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for 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 these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. 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 rooms for the particular facilities involved.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: February 20, 1998.

Brief description of amendment: This amendment changed the Pilgrim Nuclear Power Station Technical Specification (TS) 3/4.5.B and its Bases to incorporate the ultimate heat sink (UHS) temperature of 75 °F, as required by Amendment No. 173. The introduction of a UHS temperature restriction requires new specifications, actions, and surveillances for the salt service water system. The amendment also replaced existing specification 3.5.B "Containment Cooling System" with new Specification 3/4.5.B.1 "Residual Heat Removal (RHR) Suppression Pool Cooling", 3/4.5.B.2 "Residual Heat Removal (RHR) Containment Spray", 3/4.5.B.3 "Reactor Building Closed Cooling Water (RBCCW) System", and 3/4.5.B.4 "Salt Service Water (SSW) System and Ultimate Heat Sink (UHS)".

Date of issuance: July 28, 1998.

Effective date: July 28, 1998.

Amendment No.: 176.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 8, 1998 (63 FR 17221).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: September 19, 1997, as supplemented June 15, 1998.

Brief description of amendment: The amendment relocates the Radioactive Effluent Technical Specifications and the Radiological Environmental Monitoring Program to the Offsite Dose Calculation Manual, in accordance with the recommendations of Generic Letter 89–01. Changes are also being made to other sections of the Technical Specifications to align them with NUREG–1433, to minimize changes when converting to the Improved Standard Technical Specifications.

Date of issuance: July 31, 1998.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 177.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications and the license.

Date of initial notice in **Federal Register**: February 25, 1998 (63 FR 9591).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: June 26, 1998, as supplemented July 22, 1998.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.7.8, "Ultimate Heat Sink (UHS)," to permit an 8-hour delay in the UHS temperature restoration period prior to entering the plant shutdown required actions. This TS amendment is given as a one-time amendment change effective until September 30, 1998, after which the TS will revert back to the original TS provisions.

Date of issuance: July 29, 1998.

Effective date: July 29, 1998.

Amendment No.: 179.

Facility Operating License No. DPR–23. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (63 FR 36967 dated July 8, 1998). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by August 7, 1998, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of NSHC are contained in a Safety Evaluation dated July 29, 1998.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: P. T. Kuo, Acting.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: March 30, 1998.

Brief description of amendments: The amendments will (1) restore Custom Technical Specifications (CTS) and the associated license conditions that had been replaced by Improved Technical Specifications (ITS). (2) change certain management titles and responsibilities to reflect the permanently shutdown condition of the plant, (3) allow use of Certified Fuel Handlers in lieu of licensed operators, (4) modify shift crew composition, and (5) eliminate verbiage that imples the units are operational.

Date of Issuance: July 24, 1998.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 179 & 166.

Facility Operating License Nos. DPR–39 and DPR–48: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 6, 1998 (63 FR 25105). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 24, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: June 6, 1997, as supplemented September 25, 1997.

Brief description of amendment: The amendment revises Technical Specifications (TS) Table 4.1–2, Frequency for Sampling Tests, to delete the requirement to sample the spray additive tank and delete the requirement for a sodium hydroxide (NaOH) spray additive in TS Section 5.2.C.1.

Date of issuance: July 29, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 197.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 28, 1998 (63 FR 4310).

The September 25, 1997, letter provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: March 3, 1998, as supplemented by letters dated April 24, May 7, and July 22, 1998.

Brief description of amendments: The amendments revise Figure 5.1–1 of the Technical Specifications (TS) to show the new location of the meteorological tower. The meteorological tower will be relocated to a new location to facilitate use of the current location as a construction site. The proposed TS change does not change the related TS Section 5.1.1.

Date of issuance: July 30, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1—179; Unit 2—161.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 29, 1998 (63 FR 35293).

The July 22, 1998, submittal provided clarifying information that did not change the scope of the March 3, 1998, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 30, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, (BVPS–1 and BVPS–2) Shippingport, Pennsylvania

Date of application for amendments: June 19, 1998, as supplemented June 23, 1998.

Brief description of amendments: These amendments revise the BVPS–1 and BVPS–2 Technical Specifications (TSs) definitions of a channel calibration to add two sentences stating that (1) the calibration of instrument channels with resistance temperature detector or thermocouple sensors may consist of an inplace qualitative assessment of sensor behavior and normal calibration of the remaining adjustable devices in the channel and (2) whenever a sensing element is replaced, the next required channel calibration shall include an inplace cross calibration that compares the other sensing elements with the recently installed sensing element. This change makes the BVPS–1 and BVPS–2 TS definition of channel calibration consistent with the definition of a channel calibration contained in the NRC's improved Standard Technical Specifications for Westinghouse Plants (NUREG–1431, Revision 1).

Date of Issuance: July 28, 1998.

Effective date: Both units, effective immediately, to be implemented within 30 days.

Amendment Nos.: 216 and 93.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 26, 1998 (63 FR 34939).

The June 23, 1998, letter provided minor editorial changes to the TS pages that did not change the initial proposed no significant hazards consideration determination or expand the amendment request beyond the scope of the June 26, 1998 **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 28, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: March 20, 1998, and supplemented May 22, 1998.

Brief description of amendment: The amendment proposed to revise Improved Technical Specification Safety Limits and Administrative Controls to replace the titles of the Senior Vice President, Nuclear Operations and the Vice President, Nuclear Production with the position of Chief Nuclear Officer.

Date of issuance: July 20, 1998.

Effective date: July 20, 1998.

Amendment No.: 168.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 6, 1998 (63 FR 25109).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 20, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: December 29, 1997, as supplemented by June 15, 1998.

Brief description of amendment: The amendment will modify the Technical Specifications for selected cycle-specific reactor physics parameters to refer to the St. Lucie Unit 2 Core Operating Limits Report for limiting values.

Date of Issuance: July 24, 1998.

Effective Date: July 24, 1998.

Amendment No.: 92.

Facility Operating License No. NPF–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 11, 1998 (63 FR 6985).

The June 15, 1998, supplement provided clarifying information that did not change the scope of the December 29, 1997 application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981–5596.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: February 10, 1997, as supplemented December 26, 1997, and July 16, and July 28, 1998.

Brief description of amendment: The amendment revised the Technical Specifications to reflect the adoption of the BWR Owner's Group Long-Term Solution Stability System Option 1–D in addressing reactor operation in or near a region of potential thermal hydraulic instability.

Date of issuance: July 29, 1998.

Effective date: July 29, 1998, to be implemented within 30 days.

Amendment No.: 177.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 26, 1997 (62 FR 14462).

The December 26, 1997, July 16, and July 28, 1998, submittals provided clarifying information and an administrative change that did not alter the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: January 15, 1998, as supplemented May 29, 1998.

Brief description of amendments: The amendment allows a reduction in the required number of incore instrumentation detectors for the remainder of Unit 1, Cycle 19 operation.

Date of issuance: July 28, 1998.

Effective date: July 28, 1998, with full implementation within 30 days.

Amendment Nos.: 136.

Facility Operating License Nos. DPR–42 and DPR–60. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 30, 1998 (63 FR 4676) The May 29, 1998, supplement provided clarifying information within the scope of the **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 28, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: December 12, 1997.

Brief description of amendment: The amendment revises the working hours for operating personnel to allow 8- to 12-hour work days, nominal 40-hour weeks. In addition, associated changes are being made to surveillance intervals to maintain the same frequency.

Date of issuance: July 24, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 244.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 28, 1998 (63 FR 4321).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: March 31, 1997, as supplemented June 18, 1997, October 10, 1997, October 20, 1997, November 11, 1997, December 22, 1997, January 15, 1998, January 27, 1998, March 30, 1998, April 23, 1998, April 27, 1998, May 8, 1998, and May 22, 1998.

Brief description of amendment: This amendment changes the Technical Specifications to accommodate the modification of the spent fuel pool by replacing the three Region 1 rack modules with seven new borated stainless steel rack modules scheduled for implementation in 1998. Six new peripheral modules would be added at some future date. Two of the seven new modules planned to be installed in 1998 are to be designated as part of Region 2, effectively increasing the Region 2 area. The other five new modules compose Region 1, resulting in a total of 294 storage positions in Region 1. Region 2, with 1075 storage positions, consists of three rack types, Type 1, Type 2, and Type 4. Type 1 cells are the Boraflex cells that form Region 2 for the existing license. Two racks of Type 2 cells, containing borated stainless steel (BSS) absorber plates are be added to increase

the storage capacity of Region 2. In addition, the capacity of Region 2 could be increased in the future by the addition of Type 4 racks, which also contain BSS absorber plates. The amendment increases the boron concentration from 300 ppm to 2300 ppm.

Date of issuance: July 30, 1998.
Effective date: July 30, 1998.
Amendment No.: 72.
Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register**: June 30, 1998 (63 FR 35617).

The May 8 and 22, 1998, letters provided clarifying information that did not change the proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 30, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Southern Nuclear Power Company, Inc., et al. Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant (VEGP), Units 1 and 2, Burke County, Georgia

Date of application for amendments: May 8, 1998.

Brief description of amendments: The amendments revise VEGP Technical Specification 5.5.7, "Reactor Coolant Pump Flywheel Inspection Program," to provide an exception to the examination requirements of Regulatory Position C.4.b of Regulatory Guide 1.14, Revision 1, dated August 1975.

Date of issuance: July 21, 1998.
Effective date: As of the date of issuance to be implemented within 30 days.
Amendment Nos.: Unit 1—103; Unit 2—81.
Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register**: June 17, 1998 (63 FR 33108).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 21, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: February 25, 1998 (TS 97–06).

Brief description of amendments: The amendments change the Technical Specifications (TS) by revising the surveillance requirements for the emergency diesel generators.

Date of issuance: July 22, 1998.
Effective date: To be implemented no later than 45 days after issuance.
Amendment Nos.: Unit 1—234; Unit 2—224.
Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the TS.
Date of initial notice in **Federal Register**: April 8, 1998 (63 FR 17235).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 22, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: May 2, 1995, as supplemented October 12, 1995, March 26, 1996, December 15, 1997, and May 27, 1998 (TSCR 172).

Brief description of amendments: These amendments revise the Technical Specifications (TS) Table 15.4.1–1, "Minimum Frequencies For Checks, Calibrations, and Tests Of Instrument Channels," to change the test frequency of the containment high range radiation monitor, revise note 7, and revise item 36 to clarify which monitors in the radiation monitoring system support current TS or meet the requirements of 10 CFR 50.36. In addition several administrative changes to referenced TS sections and plant system titles were made to correct omissions from previous amendments.

Date of issuance: July 17, 1998.
Effective date: July 17, 1998. The TS are to be implemented within 45 days from the date of issuance. Implementation shall also include relocation of certain TS requirements to licensee-controlled documents, as described in the licensee's application dated May 2, 1995, as supplemented October 12, 1995, March 26, 1996, December 15, 1997, and May 27, 1998, and evaluated in the staff's safety evaluation attached to these amendments.
Amendment Nos.: 185 and 189.
Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register**: May 6, 1998 (63 FR 25122).

The May 27, 1998, submittal provided additional clarifying information and updated TS pages. This information was within the scope of the original **Federal Register** notice and did not change the staff's initial no significant hazards considerations determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 17, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Unit 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: May 15, 1998 (TSCR 205, NPL–98–0303).

Brief description of amendment: This amendment revises the schedule for implementing the boron concentration changes from refueling outage 24 to refueling outage 23 for the planned conversion of Unit 2 to 18-month fuel cycles.

Date of issuance: July 21, 1998.
Effective date: July 21, 1998, with full implementation within 45 days.
Amendment No.: 190.
Facility Operating License No. DPR–27: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register**: June 17, 1998 (63 FR 33111).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 21, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 17, 1998.

Brief description of amendment: The amendment revised Technical Specification 3/4.7.5, Ultimate Heat Sink, by adding a new Action Statement to be used in the event that plant inlet water temperature exceeds 90 degrees F.

Date of issuance: July 18, 1998.
Effective date: July 18, 1998.
Amendment No.: 118.
Facility Operating License No. NPF–42: The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated July 18, 1998.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, D.C. 20037.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 24, 1995, as supplemented by letters dated July 26, 1995, and September 5, 1996.

Brief description of amendment: The amendment adds a new action statement to Technical Specification (TS) 3.5.1 which provides a 72-hour allowed outage time (AOT) for one accumulator to be inoperable because its boron concentration did not meet the 2300–2500 parts per million band. In addition, TS surveillance requirements are changed to incorporate the guidance of Generic Letter 93–05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Operation" that is applicable to the accumulators, and the TS Bases section for TS 3/4.5.1 is revised to reflect the changes described above. Instrumentation surveillance requirements associated with the accumulator are being relocated from the technical specifications to Chapter 16 of the Updated Safety Analysis Report.

Date of issuance: July 21, 1998.

Effective date: July 21, 1998, to be implemented within 30 days from the date of issuance.

Amendment No.: 119.

Facility Operating License No. NPF–42. The amendment revised the Operating License and Technical Specifications.

Date of initial notice in **Federal Register**: April 12, 1995 (60 FR 18632).

The July 26, 1995, and September 5, 1996, supplemental letters provided additional clarifying information and did not change the initial no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 21, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 5th day of August 1998.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–21724 Filed 8–11–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23380; 812–11216]

CIBC Oppenheimer Corp.; Notice of Application

August 5, 1998.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1) of the Act, under section 6(c) of the Act for an exemption from section 14(a) of the Act, and under section 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: CIBC Oppenheimer Corp. ("CIBC") requests an order with respect to the REDSS trusts ("REDSS Trusts") and future trusts that are substantially similar to the REDSS Trusts and for which CIBC will serve as a principal underwriter (collectively, the "Trusts") that would (i) permit other registered investment companies, and companies excepted from the definition of investment company under section 3(c)(1) or (c)(7) of the Act, to own a greater percentage of the total outstanding voting stock (the "Securities") of any Trust than that permitted by section 12(d)(1), (ii) exempt the Trusts from the initial net worth requirements of section 14(a), and (iii) permit the Trusts to purchase U.S. government securities from CIBC at the time of a Trust's initial issuance of Securities.

FILING DATES: The application was filed on July 8, 1998.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving CIBC with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 31, 1998, and should be accompanied by proof of service on CIBC, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. CIBC Oppenheimer Corp., CIBC Oppenheimer Tower, World Financial Center, New York, New York 0281. Copy to Thomas A. McGavin, Jr., Esq., Rogers & Wells LLP, 200 Park Avenue, New York, New York 10166.

FOR FURTHER INFORMATION CONTACT: Brian T. Hourihan, Senior Counsel, at (202) 942–0526, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC. 20549 (tel. (202) 942–8090).

Applicant's Representations

1. Each Trust will be a limited-life, grantor trust registered under the Act as a non-diversified, closed-end management investment company. CIBC will serve as a principal underwriter (as defined in section 2(a)(29) of the Act) of the Securities issued to the public by each Trust.

2. Each Trust will, at the time of its issuance of Securities, (i) enter into one or more forward purchase contracts (the "Contracts") with a counterparty to purchase a formulaically-determined number of a specified equity security or securities (the "Shares") of one specified issuer,[1] and (ii) in some cases, purchase certain U.S. Treasury securities ("Treasuries"), which may include interest-only or principal-only securities maturing at or prior to the Trust's termination. The Trusts will purchase the Contracts from counterparties that are not affiliated

[1] Initially, no Trust will hold Contracts relating to the Shares of more than one issuer. However, if certain events specified in the Contracts occur, such as the issuer of Shares spinning-off securities of another issuer to the holders of the Shares, the Trust may receive shares of more than one issuer at the termination of the Contracts.

with either the relevant Trust or CIBC. The investment objective of each Trust will be to provide to each holder of Securities ("Holder") (i) current cash distributions from the proceeds of any Treasuries, and (ii) participation in, or limited exposure to, changes in the market value of the underlying Shares.

3. In all cases, the Shares will trade in the secondary market and the issuer of the Shares will be a reporting company under the Securities Exchange Act of 1934. The number of Shares, or the value of the Shares, that will be delivered to a Trust pursuant to the Contracts may be fixed (*e.g.*, one Share per Security issued) or may be determined pursuant to a formula, the product of which will vary with the price of the Shares. A formula generally will result in each Holder of Securities receiving fewer Shares as the market value of the Shares increases, and more Shares as their market value decreases.[2] At the termination of each Trust, each Holder will receive the number of Shares per Security, or the value of the Shares, as determined by the terms of the Contracts, that is equal to the Holder's *pro rata* interest in the Shares or amount received by the Trust under the Contracts.[3]

4. Securities issued by the Trusts will be listed on a national securities exchange or traded on The Nasdaq National Market System. Thus, the Securities will be "national market system" securities subject to public price quotation and trade reporting requirements. After the Securities are issued, the trading price of the Securities is expected to vary from time to time based primarily upon the price of the underlying Shares, interest rates, and other factors affecting conditions and prices in the debt and equity markets. CIBC currently intends, but will not be obligated, to make a market in the Securities of each Trust.

5. Each Trust will be internally managed by three trustees and will not have a separate investment adviser. The trustees will have limited or no power to vary the investments held by each Trust. A bank qualified to serve as a trustee under the Trust Indenture Act of 1939, as amended, will act as custodian for each Trust's assets and as administrator, paying agent, registrar, and transfer agent with respect to the Securities of each Trust. The bank will have no other affiliation with, and will not be engaged in any other transaction with, any Trust. The day-to-day administration of each Trust will be carried out by CIBC or the bank.

6. The Trusts will be structured so that the trustees are not authorized to sell the Contracts or Treasuries under any circumstances or only upon the occurrence of certain events under a Contract. The Trusts will hold the Contracts until maturity or any earlier acceleration, at which time they will be settled according to their terms. However, in the event of the bankruptcy or insolvency of any counterparty to a Contract with a Trust, or the occurrence of certain other events provided for in the Contract, the obligations of the counterparty under the Contract may be accelerated and the available proceeds of the Contract will be distributed to the Holders.

7. The trustees of each Trust will be selected initially by CIBC, together with any other initial Holders, or by the grantors of the Trust. The Holders of each Trust will have the right, upon the declaration in writing or vote of more than two-thirds of the outstanding Securities of the Trust, to remove a trustee. Holders will be entitled to a full vote for each Security held on all matters to be voted on by Holders and will not be able to cumulate their votes in the election of trustees. The investment objectives and policies of each Trust may be changed only with the approval of a "majority of the Trust's outstanding Securities"[4] or any greater number required by the Trust's constituent documents. Unless Holders so request, it is not expected that the Trusts will hold any meetings of Holders, or that Holders will ever vote.

8. The Trusts will not be entitled to any rights with respect to the Shares until any Contracts requiring delivery of the Shares to the Trust are settled, at which time the Shares will be promptly distributed to Holders. The Holders, therefore, will not be entitled to any rights with respect to the Shares (including voting rights or the right to receive any dividends or other distributions) until receipt by them of the Shares at the time the Trust is liquidated.

9. Each Trust will be structured so that its organizational and ongoing expenses will not be borne by the Holders, but rather, directly or indirectly, by CIBC, the counterparties, or another third party, as will be described in the prospectus for the relevant Trust. At the time of the original issuance of the Securities of any Trust, there will be paid to each of the administrator, the custodian, and the paying agent, and to each trustee, a one-time amount in respect of such agent's fee over its term. Any expenses of the Trust in excess of this anticipated amount will be paid as incurred by a party other than the Trust itself (which party may be CIBC).

Applicant's Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A)(i) of the Act prohibits (i) any registered investment company from owning in the aggregate more than 3% of the total outstanding voting stock of any other investment company, and (ii) any investment company from owning in the aggregate more than 3% of the total outstanding voting stock of any registered investment company. A company that is excepted from the definition of investment company under section 3(c)(1) or (C)(7) of the Act is deemed to be an investment company for purposes of section 12(d)(1)(A)(i) of the Act under sections 3(c)(1) and (c)(7)(D) of the Act. Section 12(d)(1)(C) of the Act similarly prohibits any investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies from owning more than 10% of the total outstanding voting stock of any closed-end investment company.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1), if, and to the extent that, the exemption is consistent with the public interest and protection of investors.

3. CIBC believes, in order for the Trusts to be marketed most successfully, and to be traded at a price that most accurately reflects their value, that it is necessary for the Securities of each Trust to be offered to large investment companies and investment company complexes. CIBC states that these investors seek to spread the fixed costs of analyzing specific investment opportunities by making sizable investments of those opportunities. Conversely, CIBC asserts that it may not

[2] A formula is likely to limit the Holder's participation in any appreciation of the underlying Shares, and it may, in some cases, limit the Holder's exposure to any depreciation in the underlying Shares. It is anticipated that the Holders will receive a yield greater than the ordinary dividend yield on the Shares at the time of the issuance of the Securities, which is intended to compensate Holders for the limit on the Holders' participation in any appreciation of the underlying Shares. In some cases, there may be an upper limit on the value of the Shares that a Holder will ultimately receive.

[3] The contracts may provide for an option on the part of a counterparty to deliver Shares, cash, or a combination of Shares and cash to the Trust at the termination of each Trust.

[4] A "majority of the Trust's outstanding Securities" means the lesser of (i) 67% of the Securities represented at a meeting at which more than 50% of the outstanding Securities are represented, and (ii) more than 50% of the outstanding Securities.

be economically rational for the investors, or their advisers, to take the time to review an investment opportunity if the amount that the investors would ultimately be permitted to purchase is immaterial in light of the total assets of the investment company or investment company complex. Therefore, CIBC argues that these investors should be able to acquire Securities in each Trust in excess of the limitations imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C). CIBC requests that the SEC issue an order under section 12(d)(1)(J) exempting the Trusts from the limitations.

4. CIBC states that section 12(d)(1) was designed to prevent one investment company from buying control of other investment companies and creating complicated pyramidal structures. CIBC also states that section 12(d)(1) was intended to address the layering of costs to investors.

5. CIBC believes that the concerns about pyramiding and undue influence generally do not arise in the case of the Trusts because neither the trustees nor the Holders will have the power to vary the investments held by each Trust or to acquire or dispose of the assets of the Trusts. To the extent that Holders can change the composition of the board of trustees or the fundamental policies of each Trust by vote, CIBC argues that any concerns regarding undue influence will be eliminated by a provision in the charter documents of the Trusts that will require any investment companies owning voting stock of any Trust in excess of the limits imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C) to vote their Securities in proportion to the votes of all other Holders. CIBC also believes that the concern about undue influence through a threat to redeem does not arise in the case of the Trusts because the Securities will not be redeemable.

6. Section 12(d)(1) also was designed to address the excessive costs and fees that may result from multiple layers of investment companies. CIBC believes that these concerns do not arise in the case of the Trusts because of the limited ongoing fees and expenses incurred by the Trusts and because generally these fees and expenses will be borne, directly or indirectly, by CIBC or another third party, not by the Holders. In addition, the Holders will not, as a practical matter, bear the organizational expenses (including underwriting expenses) of the Trusts. CIBC asserts that the organizational expenses effectively will be borne by the counterparties in the form of a discount in the price paid to them for the Contracts, or will be borne directly by CIBC, the counterparties, or other third parties. Thus, a Holder will not pay duplicative charges to purchase securities in any Trust. Finally, there will be no duplication of advisory fees because the Trusts will be internally managed by their trustees.

7. CIBC believes that the investment product offered by the Trusts serves a valid business purpose. The Trusts, unlike most registered investment companies, are not marketed to provide investors with either professional investment asset management or the benefits of investment in a diversified pool of assets. Rather, CIBC asserts that the Securities are intended to provide Holders with an investment having unique payment and risk characteristics, including an anticipated higher current yield than the ordinary dividend yield on the Shares at the time of the issuance of the Securities.

8. CIBC believes that the purposes and policies of section 12(d)(1) are not implicated by the Trusts and that the requested exemption from section 12(d)(1) is consistent with the public interest and the protection of investors.

B. Section 14(a)

1. Section 14(a) of the Act requires, in pertinent part, that an investment company have a net worth of at least $100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a–3 exempts from section 14(a) unit investment trusts that meet certain conditions in recognition of the fact that, once the units are sold, a unit investment trust requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a–3 provides that a unit investment trust investing in eligible trust securities shall be exempt from the net worth requirement, provided that the trust holds at least $100,000 of eligible trust securities at the commencement of a public offering.

2. CIBC argues that, while the Trusts are classified as management companies, they have the characteristics of unit investment trusts. Investors in the Trusts, like investors in a unit investment trust, will not be purchasing interests in a managed pool of securities, but rather in a fixed and disclosed portfolio that is held until maturity. CIBC believes that the make-up of each Trust's assets, therefore, will be "locked-in" for the life of the portfolio, and there is no need for an ongoing commitment on the part of the underwriter.

3. CIBC states that, in order to ensure that each Trust will become a going concern, the Securities of each Trust will be publicly offered in a firm commitment underwriting, registered under the Securities Act of 1933, resulting in net proceeds to each Trust of at least $10,000,000. Prior to the issuance and delivery of the Securities of each Trust to the underwriters, the underwriters will enter into an underwriting agreement pursuant to which they will agree to purchase the Securities subject to customery conditions to closing. The underwriters will not be entitled to purchase less than all of the Securities of each Trust. Accordingly, CIBC states that either the offering will not be completed at all or each Trust will have a net worth substantially in excess of $100,000 on the date of the issuance of the Securities. CIBC also does not anticipate that the net worth of the Trusts will fall below $100,000 before they are terminated.

4. Section 6(c) of the Act provides that the SEC may exempt persons or transactions if, and to the extent that, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. CIBC requests that the SEC issue an order under section 6(c) exempting the Trusts from the requirements of section 14(a). CIBC believes that the exemption is appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act.

C. Section 17(a)

1. Sections 17(a) (1) and (2) of the Act generally prohibit the principal underwriter, or any affiliated person of the principal underwriter, of a registered investment company from selling or purchasing any securities to or from that investment company. The result of these provisions is to preclude the Trusts from purchasing Treasuries from CIBC.

2. Section 17(b) of the Act provides that the SEC shall exempt a propsed transaction from section 17(g) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act. CIBC requests an exemption from sections 17(a)(1) and (2) to permit the Trusts to purchase Treasuries from CIBC.

3. CIBC states that the policy rationale underlying section 17(a) is the concern that an affiliated person of an investment company, by virtue of this relationship, could cause the investment company to purchase securities of poor quality from the affiliated person or to overpay for securities. CIBC argues that it is unlikely that it would be able to exercise any adverse influence over the Trusts with respect to purchases of Treasuries because Treasuries do not vary in quality and are traded in one of the most liquid markets in the world. Treasuries are available through both primary and secondary dealers, making the Treasury market very competitive. In addition, market prices on Treasuries can be confirmed on a number of commercially available information screens. CIBC argues that because it is one of a limited number of primary dealers in Treasuries, it will be able to offer the Trusts prompt execution of their Treasury purchases at very competitive prices.

4. CIBC states that it is only seeking relief from section 17(a) with respect to the initial purchase of the Treasuries and not with respect to an ongoing course of business. Consequently, investors will know before they purchase a Trust's Securities the Treasuries that will be owned by the Trust and the amount of the cash payments that will be provided periodically by the Treasuries to the Trust and distributed to Holders. CIBC also asserts that whatever risk there is of overpricing the Treasuries will be borne by the counterparties and not by the Holders because the cost of the Treasuries will be calculated into the amount paid on the Contracts. CIBC argues that, for this reason, the counterparties will have a strong incentive to monitor the price paid for the Treasuries, because any overpayment could result in a reduction in the amount that they would be paid on the Contracts.

5. CIBC believes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person, that the proposed transaction is consistent with the policy of each of the Trusts, and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policies and provisions of the Act.

Applicant's Conditions

CIBC agrees that the order granting the requested relief will be subject to the following conditions:

1. Any investment company owning voting stock of any Trust in excess of the limits imposed by section 12(d)(1) of the Act will be required by the Trust's charter documents, or will undertake, to vote its Trust shares in proportion to the vote of all other Holders.

2. The trustees of each Trust, including a majority of the trustees who are not interested persons of the Trust, (1) will adopt procedures that are reasonably designed to provide that the conditions set forth below have been complied with; (ii) will make and approve such changes as are deemed necessary; and (iii) will determine that the transactions made pursuant to the order were effected in compliance with such procedures.

3. The Trusts (i) will maintain and preserve in an easily accessible place a written copy of the procedures (and any modifications to the procedures), and (ii) will maintain and preserve for the longer of (a) the life of the Trusts and (b) six years following the purchase of any Treasuries, the first two years in an easily accessible place, a written record of all Treasuries purchased, whether or not from CIBC, setting forth a description of the Treasuries purchased, the identity of the seller, the terms of the purchase, and the information or materials upon which the determinations described below were made.

4. The Treasuries to be purchased by each Trust will be sufficient to provide payments to Holders of Securities that are consistent with the investment objectives and policies of the Trust as recited in the Trust's registration statement and will be consistent with the interests of the Trust and the Holders of its Securities.

5. The terms of the transactions will be reasonable and fair to the Holders of the Securities issued by each Trust and will not involve overreaching of the Trust or the Holders of Securities of the Trust on the part of any person concerned.

6. The fee, spread, or other remuneration to be received by CIBC will be reasonable and fair compared to the fee, spread, or other remuneration received by dealers in connection with comparable transactions at such time, and will comply with section 17(e)(2)(C) of the Act.

7. Before any Treasuries are purchased by the Trust, the Trust must obtain such available market information as it deems necessary to determine that the price to be paid for, and the terms of, the transaction are at least as favorable as that available from other sources. This will include the Trust obtaining and documenting the competitive indications with respect to the specific proposed transaction from two other independent government securities dealers. Competitive quotation information must include price and settlement terms. These dealers must be those who, in the experience of the Trust's trustees, have demonstrated the consistent ability to provide professional execution of Treasury transactions at competitive market prices. They also must be those who are in a position to quote favorable prices.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–21593 Filed 8–11–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23381, 812–10990]

Morgan Stanley, Dean Witter, Discover & Co., et al.; Notice of Application

August 6, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under (a) sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") requesting an exemption from section 17(a) of the Act; (b) section 6(c) of the Act requesting an exemption from section 17(e) of the Act and rule 17e–1 under the Act; and (c) section 10(f) of the Act requesting an exemption from section 10(f) and rule 10f–3 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit registered open-end investment companies that have one or more investment advisers and for which Morgan Stanley Asset Management ("MSAM") or Miller, Anderson & Sherred, LLP ("MA&S") acts as an investment adviser, to engage in certain principal and brokerage transactions with Morgan Stanley, Dean Witter, Discover & Co. ("MSDWD") and to purchase securities in certain underwritings. The transactions would be between MSDWD, or a member of an underwriting syndicate in which MSDWD is a participant, and those portions of the investment companies' portfolios that are not advised by MSAM or MA&S. The order also would permit the investment companies not to aggregate certain purchases from an underwriting syndicate in which MSDWD is a principal underwriter.

APPLICANTS: AMR Investment Services Trust ("AMR Trust"), Variable Annuity Portfolios, MSDWD, MSAM, and MA&S.

FILING DATE: The application was filed on February 3, 1998. Applicants have ageeed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 31, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: AMR Trust, 4333 Amon Carter Blvd., MD 5645, Fort Worth, Texas 76155; Variable Annuity Portfolios, 21 Milk Street, 5th Floor, Boston, Massachusetts 02109; MSDWD, 1585 Broadway, New York, New York 10036; MSAM, 1221 Avenue of the Americas, New York, New York 10020; and MA&S, One Tower Bridge, West Conshohocken, Pennsylvania 19428.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. MSDWD is registered as a broker-dealer under the Securities Exchange Act of 1934 and as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). MSAM and MA&S are controlled by MSDWD and are registered as investment advisers under the Advisers Act.

2. AMR Trust and Variable Annuity Portfolios are open-end investment companies registered under the Act and each consists of several portfolios. AMR Trust is advised by AMR Investment Services, Inc. and is a "master fund" with several feeder funds. Variable Annuity Portfolios is advised by Citibank, N.A. MSAM currently serves as a subadviser to a portion of one portfolio of AMR Trust and MA&S currently serves as a subadviser to a portion of several portfolios of the Variable Annuity Portfolios, each of which are otherwise unaffiliated with MSAM, MA&S, or MSDWD (the "Portfolios"). In each case, the other portions are advised by investment subadvisers ("Subadvisers") that are not affiliated persons, or affiliated persons of an affiliated person, of MSDWD (each, an "Unaffiliated Subadviser," and each portion, an "Unaffiliated Portion").[1]

3. Applicants request that the relief apply to any registered open-end investment company for which MSAM, MA&S, or any entity controlled by, controlling, or under common control with MSDWD now or in the future acts as investment adviser (collectively with MSAM and MA&S, "MSDWD Advisers").[2] Applicants also request relief for any broker-dealer controlling, controlled by, or under common control with MSDWD (collectively with MSDWD, "Affiliated Broker-Dealers").

4. The Portfolios use a multi-manager structure in which separate Subadvisers, including MSDWD Advisers, are used to manage discrete portions of the Portfolio. Each Subadviser acts as if it were managing a separate investment company. The Subadvisers do not collaborate, and each is responsible for making independent investment and brokerage allocation decisions for its portion based on its own research and analysis. The Subadvisers do not receive information about investment or brokerage allocation decisions of another portion of the Portfolio before they are implemented. Each Subadviser is compensated based only on a percentage of the value of the Portfolio's assets allocated to it. Applicants state that MSDWD does not and will not control any Portfolio for which an MSDWD Adviser acts as Subadviser.

5. Applicants request relief to permit (a) Unaffiliated Portions to engage in principal transactions with Affiliated Broker-Dealers and to purchase securities in an underwriting in which an Affiliated Broker-Dealer acts as a principal underwriter. (b) Unaffiliated Portions to engage in brokerage transactions with Affiliated Broker-Dealers, when the Affiliated Broker-Dealer acts as broker in the ordinary course of business, without complying with subsections (b) and (c) of rule 17e-1 under the Act, and (c) portions of Portfolios advised by an MSDWD Adviser ("Affiliated Portions") to purchase securities in an underwriting without aggregating that Portion's purchase with purchases of Unaffiliated Portions as required by rule 10f-3(b)(7) under the Act.

Applicants' Legal Analysis

A. Principal Transactions Between Unaffiliated Portions and Affiliated Broker-Dealers

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person, or an affiliated person of an affiliated person, of the company. Sections 2(a)(3)(C) and (E) of the Act define an "affiliated person" of another person to be any person controlling, controlled by, or under control with the person, and any investment adviser of an investment company, respectively. Applicants believe that an MSDWD Adviser acting as a Subadviser of a Portfolio would be an affiliated person of that Portfolio, and each Affiliated Broker-Dealer would be an affiliated person of the MSDWD Adviser and as affiliated person of an affiliated person ("second-tier affiliate") of the Portfolio. As a result, applicants believe that any principal transaction between an Unaffiliated Portion and an Affiliated Broker-Dealer would be prohibited by section 17(a).

2. Applicants request relief from section 17(a) to permit principal transactions entered into in the ordinary course of business between the Unaffiliated Portion and an Affiliated Broker-Dealer. Applicants state that the relief would apply only when an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of a Portfolio solely because an MSDWD Adviser is the subadviser to another portion of the same Portfolio.

3. Section 6(c) permits the SEC to exempt any person or transaction from

[1] The term *Unaffiliated Subadviser* includes investment advisers that manage discrete portions of multi-managed Portfolios, whether or not the Portfolios have a primary adviser that is responsible for the overall investment performance of the fund and monitoring the Subadvisers. In addition, the term includes a primary adviser to the extent the primary adviser is responsible for a portion of a multi-managed Portfolio.

[2] All registered open-end investment companies that currently intend to rely on the order are named as applicants. Any other existing or future registered open-end investment company that relies on the order will comply with the terms and conditions of the application. Any registered open-end investment company for which an MSDWD Adviser may act as investment adviser is also a "Portfolio."

any provision of the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act. Section 17(b) permits the SEC to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company and the general purposes of the Act. For the reasons stated below, applicants believe that the proposed transactions meet the standards of sections 6(c) and 17(b).

4. Applicants contend that section 17(a) is intended to prevent persons who have the power to influence an investment company from using that influence to their own pecuniary advantage. Applicants assert that when a person acting on behalf of an investment company has no direct or indirect pecuniary interest in a party to a principal transaction, then the abuses that section 17(a) was designed to prevent are not present.

5. Applicants assert that each Subadviser's contract assigns it responsibility to manage a discrete portion of the Portfolio. Each Subadviser is responsible for making independent investment and brokerage allocation decisions based on its own research and credit evaluations. Applicants state that no MSDWD Adviser will serve as Subadviser to any Portfolio where the primary adviser to the Portfolio dictates or influences brokerage allocation or investment decisions, or has the contractual right to do so. Applicants submit that in managing a discrete portion of a Portfolio, each Subadviser acts for all practical purposes as though it is managing a separate investment company. Further, applicants state that, for each transaction for which relief is requested, the Unaffiliated Subadviser would be dealing with an Affiliated Broker-Dealer that is a competitor of that Subadviser. Applicants believe therefore, that each transaction would be the product of arm's length bargaining.

6. Applicants state that the proposed transactions will be consistent with the policies of the Portfolio, since each Unaffiliated Subadviser is required to manage the Unaffiliated Portion of the Portfolio in accordance with the investment objectives and related investment policies of the Portfolio as described in its registration statement. Applicants also assert that permitting the transactions will be consistent with the general purposes of the act and in the public interest because the ability to engage in the transactions will increase the likelihood of a Portfolio achieving best price and execution on its principal transactions while giving rise to none of the abuses that section 17(a) was designed to prevent.

B. Payment of Brokerage Compensation by Unaffiliated Portions to Affiliated Broker-Dealers

1. Section 17(e)(2) of the Act prohibits an affiliated person or a second-tier affiliate of a registered investment company from receiving compensation for acting as broker in connection with the sale of securities to or by the company if the compensation exceeds the limits prescribed by the section unless otherwise permitted by rule 17e–1 under the Act. Rule 17e–1(a) provides that brokerage compensation paid pursuant to the rule must be reasonable and fair compared with compensation paid in comparable transactions. Rule 17e–1(b) requires the investment company's board of directors, including a majority of the directors who are not interested persons under section 2(a)(19) of the act, to adopt procedures regarding brokerage compensation paid pursuant to the rule and to determine at least quarterly that all transactions effected in reliance on the rule complied with the procedures. Rule 17e-1(c) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e-1.

2. Applicants state that, for the reasons discussed above, Affiliated Broker-Dealers are second-tier affiliates of the Unaffiliated Portions and thus subject to section 17(e). Applicants request an exemption under section 6(c) from the provisions of section 17(e) and rule 17e–1 to the extent necessary to permit the Unaffiliated Portions to pay brokerage compensation to Affiliated Broker-Dealers, when the Affiliated Broker-Dealer acts as broker in the ordinary course of business, without complying with the requirements of rule 173–1(b) and (c). Applicants believe that the proposed brokerage transactions meet the standards of section (c) of the Act for the same reasons that the proposed principal transactions satisfy the standards. In addition, applicants state that the brokerage transactions will comply with the requirement of rule 17e–1(a) that the brokerage compensation be fair and reasonable. Applicants also note that the Unaffiliated Subadvisers will be subject to a fiduciary duty to obtain best execution for the Unaffiliated Portion. Applicants thus believe that an exemption from the requirements of rule 17e–1(b) and (c) would be appropriate.

C. Purchases of Certain Securities by Unaffiliated Portions

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of the company, or an affiliated person of any of the foregoing. Section 10(f) also provides that the SEC may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f–3 exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f–3 provides that the amount of securities of any class of an issue to be purchased by the investment company, or by two or more investment companies having the same investment adviser, shall not exceed certain percentages specified in the rule.

2. Applicants state that when an MSDWD Adviser acts as a Subadviser to a Portfolio, it is considered to be an investment adviser to the entire Portfolio. Applicants therefore believe that all purchases of securities by an Unaffiliated Portion from an underwriting syndicate a principal underwriter of which is an Affiliated Broker-Dealer would be subject to section 10(f).

3. Applicants request relief under section 10(f) from that section to permit Unaffiliated Portions to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Broker-Dealer. In addition, in the event an Affiliated Portion purchases securities in reliance on rule 10f–3, applicants request an exemption under section 10(f) from rule 10f–3 so that an MSDWD Adviser will not be required to aggregate those purchases with any purchases of the same security by Unaffiliated Portions. Applicants request relief only to the extent that section 10(f) applies because an MSDWD Adviser is an investment adviser to the Portfolio. Applicants believe that the proposed transactions meet the standards set forth in section 10(f).

4. Applicants state that section 10(f) was adopted in response to concerns about the "dumping" of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Portfolios because, as discussed above, a decision by a Subadviser to one discrete portion of a Portfolio to purchase securities from an underwriting syndicate, a principal underwriter of which is an affiliated person of a Subadviser to a different portion of the same Portfolio, involves no potential for "dumping." In addition, applicants assert that aggregating purchases would serve no purpose because any common purchases would be coincidence, and not the result of a decision by a single Subadviser, because there is no collaboration among Subadvisers.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. Each Portfolio will be advised by a MSDWD Adviser and at least one Unaffiliated Subadviser and will be operated consistent with the manner described in the application.

2. Neither the MSDWD Adviser (except by virtue of serving as Subadviser) nor the Affiliated Broker-Dealer will be an affiliated person or a second-tier affiliate of any Unaffiliated Subadviser or any officer, trustee or employee of the Portfolio engaging in the transaction.

3. No MSDWD Adviser will directly or indirectly consult with any unaffiliated Subadviser concerning allocation of principal or brokerage transactions.

4. No. MSDWD Adviser will participate in any arrangement under which the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–21594 Filed 8–11–98; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement for Addition of Electric Generation Peaking Capacity

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) will prepare an environmental impact statement (EIS) for the proposed addition of peaking capacity to the TVA electric generation system. The EIS will evaluate the potential environmental impacts of installing and operating proposed simple cycle natural gas fired combustion turbines to provide the needed peaking capacity. TVA wants to use the EIS process to obtain the public's comments on this proposal.

DATES: Comments on the scope of the EIS must be postmarked no later than September 11, 1998. TVA will conduct public meetings on the scope of the EIS. The locations and times of these meetings are announced below.

ADDRESSES: Written comments should be sent to Greg Askew, P.E., Senior Specialist, National Environmental Policy Act, Tennessee Valley Authority, mail stop WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499. Comments may also be e-mailed to gaskew@tva.gov.

FOR FURTHER INFORMATION CONTACT: Roy V. Carter, P.E., EIS Project Manager, Environmental Research Center, Tennessee Valley Authority, mail stop CEB 4C, Muscle Shoals, Alabama 35662–1010. E-mail may be sent to rvcarter@tva.gov.

SUPPLEMENTARY INFORMATION:

Project Description

Construction and operation of simple cycle natural gas-fired combustion turbine units are proposed by TVA to meet up to 1,350 MW of peaking requirements with some capacity available as early as June 2000. Up to eight natural gas-fired combustion turbines would be installed at one, two or three existing TVA power plant sites.

The three TVA power plant sites under consideration are Johnsonville Fossil Plant in Humphreys County, Tennessee; Gallatin Fossil Plant in Sumner County, Tennessee; and Colbert Fossil Plant in Colbert County, Alabama. Each of these TVA plant sites have both coal-fired units and natural gas and/or fuel oil fired combustion turbines. These TVA plant sites offer potential advantages over greenfield sites. These advantages include use of existing plant infrastructure (water service, natural gas supply at two sites, transmission line access, combustion turbine maintenance and operating staff), existing land ownership, and an accelerated project schedule with reduced risk. Also, inherent in incremental development of industrial sites such as these is the potential for reduced environmental impacts.

Each site installation would consist of up to eight natural gas fired combustion turbine-generators. Fuel oil would be the secondary fuel. These combustion turbines would employ dry low-NO_x combustion chambers and/or water injection for NO_x control. Typical manufacturers and models of simple cycle combustion turbines for the proposed application are General Electric models GE 7001 EA and GE 7001 FA, and Westinghouse models WH 501D5A and WH 501 FA Other appurtenances and ancillary equipment would include step-up transformers for 161 kilovolt or 500 kilovolt service, transmission line connection equipment, demineralized water to supply the water injection NO_x control systems, and maintenance and operational support buildings or equipment.

Other actions necessary for operation of combustion turbines at the Colbert site would include one or more natural gas pipeline taps and conveyances.

TVA's Integrated Resource Plan

This EIS will tier from TVA's *Energy Vision 2020'An Integrated Resource Plan and Final Programmatic Environmental Impact Statement. Energy Vision 2020* was completed in December 1995 and a Record of Decision issued on February 28, 1996. Energy Vision 2020 analyzed a full range of supply-side and demand-side options to meet customer energy needs. These options were ranked using several criteria including environmental performance. Favorable options were formulated into strategies to effectively meet electric energy and peak capacity needs of TVA's customers for a range of postulated futures. A portfolio of options drawn from several robust strategies was chosen as TVA's preferred alternative. In this preferred alternative, three supply-side options selected to meet peak capacity needs were: (1) addition of combustion turbines to TVA's generation system, (2) purchase of market peaking capacity, and (3) call options on peaking capacity. The short-term action plan of *Energy Vision 2020* identified a need for 3,000 MW of baseload and peaking additions through the year 2002.

Because Energy Vision 2020 identified and evaluated alternative supply-side and demand-side energy

resources and technologies for meeting peak capacity needs, this EIS will not reevaluate those alternatives. This EIS will focus on the site-specific impacts of constructing and operating additional TVA combustion turbines at three candidate sites.

Proposed Issues To Be Addressed

The EIS will describe the existing environmental and socioeconomic resources at each of the three sites that may be potentially affected by construction and operation of natural gas-fired combustion turbines. TVA's evaluation of potential environmental impacts to these resources will include, but not necessarily be limited to the impacts on air quality, water quality, aquatic and terrestrial ecology, endangered and threatened species, wetlands, aesthetics and visual resources, noise, land use, historic and archaeological resources, and socioeconomic resources. Because the proposed projects would be located on previously disturbed property at operating TVA power plant sites, the on-site issues of terrestrial wildlife, habitat, and vegetation; aesthetics and visual resources; land use conversion; and historic and archaeological resources are not likely to be important. Also, the proposed units would have no process wastewater discharge and will require no new water supply source, thus impacts to aquatic ecology are unlikely.

Alternatives

The results of evaluating the potential environmental impacts related to these issues and other important issues identified in the scoping process together with engineering and economic considerations will be used in selecting a preferred alternative. At this time, TVA has identified the following alternatives for detailed evaluation: (1) a single site alternative, (2) alternatives employing two of the three sites, (3) an alternative employing all three sites, and (4) no action.

Scoping Process

Scoping, which is integral to the NEPA process, is a procedure that solicits public input to the EIS process to ensure that: (1) Issues are identified early and properly studied; (2) issues of little significance do not consume substantial time and effort; (3) the draft EIS is thorough and balanced; and (4) delays caused by an inadequate EIS are avoided. TVA's NEPA procedures require that the scoping process commence after a decision has been reached to prepare an EIS in order to provide an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. The scope of issues to be addressed in the draft EIS will be determined, in part, from written comments submitted by mail or e-mail, and comments presented orally or in writing at public meetings. The preliminary identification in this notice of reasonable alternatives and environmental issues is not meant to be exhaustive or final.

The scoping process will include both interagency and public scoping. The public is invited to submit written comments or e-mail comments on the scope of this EIS no later than the date given under the DATES section of this notice and/or attend the public scoping meetings. TVA will conduct three public scoping meetings using an open house format. At each meeting, TVA staff will be present to discuss the project proposals and the environmental issues, and to receive both oral and written comments. The meeting locations and schedule are as follows: Monday, August 31, Gallatin Civic Center, 210 Albert Gallatin Road, Gallatin, Tennessee; Tuesday, September 1, Humphreys County Board of Education Building, 2443 Highway 70 East, Waverly, Tennessee; Thursday, September 3, Lions Club Building, Corner of Church and First Streets, Cherokee, Alabama. The times for all three open house meetings are 4:00 p.m. to 9:00 p.m.

The agencies to be included in the interagency scoping are U.S. Fish and Wildlife Service, Tennessee Department of Conservation and Environment, the Tennessee State Historic Preservation Officer, and other agencies as appropriate.

Upon consideration of the scoping comments, TVA will develop alternatives and identify important environmental issues to be addressed in the EIS. Following analysis of the environmental consequences of each alternative, TVA will prepare a draft EIS for public review and comment. Notice of availability of the draft EIS will be published by the Environmental Protection Agency in the **Federal Register**. TVA will solicit written comments on the draft EIS, and information about possible public meetings to comment on the draft EIS will be announced. TVA expects to release a final EIS in May 1999.

Dated: August 6, 1998.

Kathryn J. Jackson,

Executive Vice President, Resource Group.

[FR Doc. 98–21580 Filed 8–11–98; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–117]

Extension of Section 301 Investigation: Intellectual Property Laws and Practices of the Government of Paraguay

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) has determined to extend the investigation of the acts, policies and practices of the Government of Paraguay that deny adequate and effective protection of intellectual property rights.

DATES: The USTR made this determination on Tuesday, August 4, 1998.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Director for Intellectual Property, (202) 395–6864; Kellie Meiman, Director for Mercosur and the Southern Cone, (202) 395–5190; or Geralyn S. Ritter, Assistant General Counsel, (202) 395–6800.

SUPPLEMENTARY INFORMATION: On January 16, 1998, the USTR identified Paraguay as a Priority Foreign Country under the "Special 301" provisions of the Trade Act of 1974, as amended (19 U.S.C. 2242). In identifying Paraguay as a Priorty Foreign Country, the USTR noted deficiencies in Paraguay's acts, policies and practices regarding intellectual property, including a lack of effective action to enforce intellectual property rights. The USTR also observed that the Government of Paraguay has failed to enact adequate and effective intellectual property legislation covering patents, copyrights and trademarks. As required under Section 302(b)(2)(A) of the Trade Act (19 U.S.C. 2412(b)(2)(A)), an investigation of these acts, policies and practices was initiated on February 17, 1998.

Extension of Investigation

Numerous bilateral negotiations have been held on these issues since the initiation of this investigation. Although Paraguay has indicated that it will take a number of actions to improve protection for intellectual property and, in particular, to strengthen the enforcement of intellectual property rights, significant progress on a majority of U.S. concerns has not occurred. These issues are too complex and complicated to resolve before the end of

the six-month statutory deadline for concluding this investigation. USTR will look to the new government taking office in Paraguay in mid-August to move quickly to address the continuing serious deficiencies in Paraguay's intellectual property regime.

In light of the need for further time for negotiations to resolve these remaining issues, the USTR has determined pursuant to section 304(a)(3)(B)(i) of the Trade Act, that "complex or complicated issues are involved in the investigation that require additional time." The USTR has therefore extended this investigation, and will make a final determination by November 17, 1998.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 98–21641 Filed 8–11–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Federal Aviation Administration

[Docket No. 29303]

Policy Regarding Airport Rates and Charges

AGENCY: Departmen of Transportation, Office of the Secretary, and Federal Aviation Administration.

ACTION: Advance notice of proposed policy, request for comments.

SUMMARY: This document requests suggestions for replacement provisions for the portions of the Department of Transportation's Policy Regarding Airport Rates and Charges (Policy Statement) issued June 21, 1996 and vacated by the United States Court of Appeals for the District of Columbia Circuit. The Department is beginning this proceeding in order to carry out its responsibility to establish reasonableness guidelines for airport fees.

DATES: Comments must be submitted on or before October 13, 1998. Reply comments will be accepted and must be submitted on or before October 26, 1998. Late filed comments will be considered to the extent possible.

ADDRESSES: Comments on this notice must be delivered or mailed, in quadruplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 29303, 800 Independence Ave., SW, Room 915G, Washington, DC 20591. All comments must be marked "Docket No. 29303." Commenters wishing the FAA to acknowledge receipt of their comments must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. . The postcard will be date stamped and mailed to the commenter.

Comments on this Notice may be delivered or examined in room 915G on weekdays, except on Federal holidays between 8:30 am and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Molar, Manager (AAS–400), (202) 267–3187 or Mr. Wayne Heibeck (AAS–400), Compliance Specialist, (202) 267–8726, Airport Compliance Division, Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 1996, Office of the Secretary and the Federal Aviation Administration (together, the "Department" of Transportation or "Department") issued a Policy Statement (61 FR 31994 *et seq.*) on the fees charged by airports to air carriers and other aeronautical users. This Policy Statement responded to 49 U.S.C. 47129(b), which requires the Secretary to publish standards or guidelines to be used in determining whether an airport fee is reasonable in disputes between airports and airlines. (Section 113 of the Federal Aviation Administration Authorization Act of 1994, Public Law No. 103–305).

The Policy Statement reflected industry practice at commercial service airports of establishing fees for the use of airfields (*e.g.*, runways and taxiways) and public-use roadways on the basis of the airport operator's costs, using historic cost valuation (HCA requirement). This cost-based approach allowed airports to recover out-of-pocket costs and permitted airfield fees to include as a cost imputed interest on airport operator funds invested in the airfield, except funds obtained from airfield fees.

Recognizing that fees for other aeronautical facilities (*e.g.*, hangars and terminals) were often established through direct negotiations with individual users, the Department adopted a more flexible approach to nonairfield fees. The Department permitted these fees to be set by any reasonable methodology, including, among others, appraised fair market value. Among the factors it considered to support the disparate treatment, the Department found that airports had not exercised monopoly power in pricing these facilities and that state and local governments operate airports to provide aeronautical services for their communities to benefit their residents and improve the local economic base, not to generate revenue surpluses.

The Policy Statement modified the approach taken in the February 3, 1995 Interim Policy on determining the reasonableness of fees for nonairfield facilities. (Under the Interim Policy, airfield and nonairfield fees were considered reasonable only when capped at historical cost). The Policy Statement also discussed: the Department's preference for direct local negotiation between airport proprietors and users; the prohibition on unjustly discriminatory fees; the obligation to maintain a fee and rental structure that makes the airport as self-sustaining as possible under the circumstances at the airport; and the prohibition against unlawful diversion of airport revenues.

Both the Air Transport Association (ATA) and the City of Los Angles sought judicial review of the policy Statement. The ATA challenged the Department's approach to determining reasonable nonairfield fees and the decision to permit airfield fees to include any imputed interest charge. The City of Los Angeles challenged the HCA requirement for airfield fees.

The United States Court of Appeals for the District of Columbia Circuit vacated and remanded portions of the Policy Statement setting forth guidance on fair and reasonable airfield and nonairfield fees. *Air Transport Association of America* v. *Department of Transportation (ATA v. DOT),* 119 F.3d 38 (D.C. Cir. 1997), as modified on rehearing, Order of Oct. 15, 1997. Specifically, the court vacated:

> paragraphs 2.4, 2.4.1, 2.4.1(a), 2.5.1, 2.5.1(a), 2.5.1(b), 2.5.1(c), 2.5.1(d), 2.5.1(e), 2.5.3, 2.5.3(a), 2.6, the Secretary's supporting discussion in the preamble, and any other portions of the rule *necessarily* implicated by the holding of [the August 1, 1997 opinion].

The court's opinion found fault with the Department's distinction between the airfield, on the one hand, and nonairfield facilities, on the other hand, with respect to the reasonableness of fees. The court believed the Department should have explained its fees policy in light of the economics of airport behavior and had failed to justify the distinction between airfield and nonairfield fees. The court also questioned the Department's justification for the disparate treatment of imputed interest charges.

On November 25, 1997, the Airports Council International-North America (ACI) and the American Association of Airport Executives (AAAE) filed a

Petition for Rulemaking proposing revisions of the Policy Statement (Docket No. OST–97–3158). The ACI/AAAE would have the Department permit airport proprietors to value airfield assets at an amount greater than historic cost (but no higher than a competitive market-based fair market value) and would permit an airport proprietor to charge imputed interest on aeronautical fees invested in aeronautical facilities. It would also permit an airport proprietor to charge current costs for airfield facilities (in addition to non-airfield facilities) not currently in use.

In support of its petition, the ACI/AAAE explained that it is the longstanding practice at many commercial service airports to charge fair market value for exclusive-use assets and to value airfield assets on the basis of historical cost. They asserted that their proposal would not necessarily change industry practice.

With regard to monopoly power, the ACI/AAAE disputed the claim that airports behave like monopolists and did not believe it necessary to hold all aeronautical fees to cost-of-service levels. Capping the fees at competitive market rates (as opposed to above-competitive market rate) would, in any event, prevent any monopolistic abuses, according to ACI/AAAE. Additionally, ACI/AAAE explained that airport proprietors engage in competition in order to maintain existing service and attract new air carriers. Further, the prohibition against unlawful airport revenue diversion acts as a check to monopolistic charging, according to these airport industry organizations. Airports compete to be gateways to domestic and international geographic regions, also. It is airlines that have market power in many city-pair markets, not airports, according to ACI/AAAE. Airlines wield power at airports through majority-in-interest clauses that provide veto power over construction or other capital projects.

ACI/AAAE also requested revisions to portions of the Policy Statement not vacated by the D.C. Circuit Court of Appeals. They proposed that the Department base its review of the reasonableness of airport fees on written submissions, rather than on a *de novo* review. They also proposed language that the Policy Statement and the expedited procedures created by 49 U.S.C. 47129 should not be applied to fees charged to signatories to an agreement.

On March 12, 1998, the ATA filed a Petition for Rulemaking proposing revisions to the Policy Statement. The ATA would have the Department reinstate the approach taken in the Interim Policy and require all aeronautical fees to be based on HCA valuation of assets. The result of this requirement would in turn be to reinstate the HCA cap on total aeronautical revenues, according to the ATA. In addition, the ATA would have the policy bar imputed interest in aeronautical charges, or at most permit imputed interest only on funds derived from nonaeronautical users. Finally, the ATA would have the Department reinstate the prohibition on charges for facilities not in use and apply that prohibition to all aeronautical charges.

In support of its request on the first two issues, ATA asserts that its proposal would address the concerns expressed by the Court of Appeals over the disparate treatment of airfield and nonairfield fees. In addition, the ATA argues that the proposal on asset valuation and imputed interest is not precluded by the court's opinion, which faulted the Department for lack of adequate justification. The ATA further argues that its approach is supported by the Department's recent determination on remand in the *Los Angeles International Airport ("LAX") Rates Proceeding*, DOT Order 97–12–31 (December 23, 1997), and that the Department's rationales in that decision apply nationwide.

On the third issue, the ATA argues that the court vacated the prohibition on charging for facilities not in use only because the prohibition was limited to the airfield. The ATA argues that because the basic premise and reasoning for the prohibition were not challenged before the court, the ACI/AAAE should not be permitted to reopen the issue, especially when the ACI/AAAE have offered no persuasive reason to reject the Department's rationale for the prohibition.

Request for Comments

As a first step in responding to the court's decision, the Department is soliciting suggestions for appropriate replacement provisions for the portion of the Policy Statement vacated by the court. In addition, more information on the nature of specific airport fee practices and analysis of the economics of airport behavior are necessary before the Department proposes new fee guidelines.

The Department anticipates that these comments will be candid, will accurately reflect current industry practices, and will suggest procedures that can be implemented without undue disruption to the industry. We hope that both the air carriers and the airports will be able to provide us with the same type of information, from each party's perspective. This request for comment is limited to the provisions in the Policy Statement that the District of Columbia Circuit Court of Appeals vacated. These are the provisions subjected to the remand proceeding. Accordingly, the Department is not requesting, at this time, comments on other portions of the Policy Statement nor on our procedures under 49 U.S.C. 47129.

Specifically, in addition to proposals for replacement provisions, the Department requests the following:

- A description of the existing aeronautical fee structures and methodologies in place at specific airport(s) (in the case of aeronautical users, airports where the user pays fees).
- The rationale for those methodologies and, if certain fees are negotiated, including a discussion of the factors considered in arriving at the final fee product.
- The explanation of the basis for distinctions between fees charged for airfield versus non-airfield assets, if applicable (and, if applicable, between terminal facilities and hangars and maintenance facilities). The basis may include industry practice, airport market power, airline market power, etc.
- Evidence that would support a determination that airports do or do not possess or use monopoly power in setting aeronautical fees and a discussion of the comment's view of the issue. In the proceeding that led to the Policy Statement, airport operators and airport users disputed whether airport proprietors can and do exercise monopoly power in pricing essential aeronautical facilities.
- Proposals on methods to curb abuse of any monopoly power in a fee reasonableness standard.
- If comments suggest a change in fee structures or methodologies, comments should include an explanation of how the proposal would affect the economic behavior of airports and air carriers. Comments should also justify the proposal under the statutory reasonableness standard (49 U.S.C. 40116(e) and 47107(a)) and explain how the proposal addresses the concerns raised by the court.
- Comments should also address the suggestion in *ATA* v. *DOT* that "Congress intended the Secretary to fashion a quasi-legislative uniform approach [for several different methodologies, depending on the circumstances] to measuring the reasonableness of airport fees." 119 F.3d at 40. Examples of approaches that would meet the court's concerns, accompanied by justification based on

industry practice, economic behavior, and other relevant criteria are invited.

• Comments requesting the Department to readopt any of the vacated provisions should include suggestions on how the Department could better justify doing so in light of the concerns raised by the court.

Accordingly, the Department is requesting comments on the matters stated above and is requesting proposals to replace provisions for the vacated portions of the Policy Statement.

Petitions for Rulemaking

The petitions for rulemaking of ACI/AAAE and ATA evidently start from different assumptions and propose significantly divergent policies. Moreover, as discussed above, the Department has determined that additional information and input is needed before a specific proposal is formulated. Accordingly, the Department is opening a new docket to receive comments on fee reasonableness. The Department is taking no further action on these petitions at this time. Therefore, this Advance Notice of Proposed Policy is limited to the issues raised by *Air Transport Association of America* v. *Department of Transportation*, 119 F.3d 38 (D.C. Cir. 1997). The substance of the two petitions will be considered along with the comments submitted by other interested parties. Comments on the petitions may be submitted during the reply period.

Issued in Washington, D.C. on August 5, 1998.

Rodney E. Slater,

Secretary of Transportation.

Jane F. Garvey,

Adminsitrator, Federal Aviation Administration.

[FR Doc. 98–21607 Filed 8–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending July 31, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–4265.

Date Filed: July 30, 1998.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR–ME 0059 dated July 14, 1998. Europe-Middle East Resolutions r1–35 PTC2 EUR–ME 0060 dated July 17, 1998—Minutes, PTC2 EUR–ME Fares 0019 dated July 28, 1998—Tables Intended effective date: January 1, 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–21584 Filed 8–11–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent to Rule on Application to Impose a Passenger Facility Charge (PFC) at Chicago O'Hare International Airport, Chicago, Illinois and Use FPC Revenue at Gary Regional Airport, Gary, Indiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a FPC at Chicago O'Hare International Airport and use the revenue from a PFC at Gary Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 11, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Mary Rose Loney, Commissioner, of the City of Chicago Department of Aviation at the following address: Chicago O'Hare International Airport, P.O. Box 66142, Chicago, Illinois 60666. Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip M. Smithmeyer, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018, (847) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Chicago O'Hare International Airport and use the revenue from a PFC at Gary Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 15, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Chicago Department of Aviation was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 5, 1998.

The following is a brief overview of the application. PFC application number: 98–09–C–00–ORD.

Level the PFC: $3.00.

Original charge effective date: September 1, 1993.

Revised proposed charge expiration date: November 1, 2011.

Total estimated PFC revenue: $1,540,000.00.

Brief description of proposed project(s):

a. Phase II Airport Master Plan
b. Terminal Apron Expansion
c. Snow Removal Equipment

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago Department of Aviation.

Issued in Des Plaines, Illinois on August 6, 1998.

Robert Benko,

Acting Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–21602 Filed 8–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4209]

Red River Manufacturing, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Red River Manufacturing, Inc. (Red River), a manufacturer of trailers, of

West Fargo, North Dakota, has determined that since March 14, 1996, its tire and rim label information was not in full compliance with 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "Tire Selection and Rims for Vehicles Other Than Passenger Cars," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Red River has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S5.3 of FMVSS No. 120 states that each vehicle shall show the information specified on the tire information level in both English and metric units. The standard also shows an example of the prescribed format.

Since the law went into effect on March 14, 1996, Red River manufactured and/or distributed 1,063 trailers that do not meet the requirements stated in the standard. The certification label affixed to Red River's trailers pursuant to Part 567 failed to comply with S5.3 of FMVSS No. 120 because of the omission of metric measurements, and Red River did not separately provide the metric measurements on another label, an alternative allowed by FMVSS No. 120. The use of metric measurements is required by FMVSS No. 120, pursuant to *Federal Motor Vehicle Safety Standards: Metric Conversion,* 50 FR 13639, published on March 14, 1995, and effective on March 14, 1996.

Red River supports its application for inconsequential noncompliance with the following statements:

1. The label contained the correct English unit information.

2. Red River had been unaware of the metric measurement requirement because Red River interpreted Part 567 as suggesting the use of metric measurements is permissive, not mandatory, and did not understand that FMVSS No. 120 made the use of certain metric measurements mandatory.

3. FMVSS No. 120's metric measurement requirements were not mandated for safety purposes. Rather, in designating the matric system as the preferred system of weights and measures, Congress was concerned chiefly with the contributions that the metric system could make to the international competitiveness of U.S. industries and to the efficiency of governmental operations.

4. The dual labeling requirement is to continue until consumers become familiar with metric measurements.

5. The omission of metric measurements from Red River's FMVSS No. 120 certification label is highly unlike to have any effect whatever on motor vehicle safety, both because the correct English units are used on Red River's labels and because of the small number of trailers involved.

6. As soon as practicable upon learning of its noncompliance, Red River has converted its labels to metric measurements, in conformity with those requirements.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C., 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 11, 1998.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 6, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–21583 Filed 8–11–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–268–82]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–268–82 (TD 8696), Definitions Under Subchapter S of the Internal Revenue Code (§ 1.1377–1).

DATES: Written comments should be received on or before October 13, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Definitions Under Subchapter S of the Internal Revenue Code.

OMB Number: 1545–1462.

Regulation Project Number: PS–268–82.

Abstract: Section 1.1377–1(b)(4) of the regulation provides that an S corporation making a terminating election under Internal Revenue Code section 1377(a)(2) must attach a statement to its timely filed original or amended return required to be filed under Code section 6037(a). The statement must provide information concerning the events that gave rise to the election and declarations of consent from the S corporation shareholders.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 4,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the 3 collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally,

tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 5, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–21556 Filed 8–11–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–4–89]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–4–89 (TD 8580), Disposition of an Interest in a Nuclear Power Plant (§ 1.468A–3).

DATES: Written comments should be received on or before October 13, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Disposition of an Interest in a Nuclear Power Plant.

OMB Number: 1545–1378.

Regulation Project Number: PS–4–89.

Abstract: This regulation relates to certain Federal income tax consequences of a disposition of an interest in a nuclear power plant by a taxpayer that has maintained a nuclear decommissioning fund with respect to that plant. The regulation affects taxpayers that transfer or acquire interests in nuclear power plants by providing guidance on the tax consequences of these transfers. In addition, the regulation extends the benefits of Internal Revenue Code section 468A to electing taxpayers with an interest in a nuclear power plant under the jurisdiction of the Rural Electrification Administration.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 52.

Estimated Time Per Respondent: 2 hours, 24 minutes.

Estimated Total Annual Burden Hours: 125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not 3 required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 5, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–21557 Filed 8–11–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

IRS Citizen Advocacy Panel Notice

AGENCY: Internal Revenue Service, Treasury.

ACTION: IRS Citizen Advocacy Panel; Notice of Solicitation of Panel Members for the Brooklyn, Midwest and Pacific-Northwest Tax Districts.

SUMMARY: The Department of Treasury is establishing IRS Citizen Advocacy Panels to provide independent monitoring of the quality of IRS customer service and to make recommendations to improve that service throughout the country.

DATES: Applications will be accepted from June 23 until September 11, 1998.

ADDRESSES: Applications can be obtained by calling the following toll-free number: 1–888–449–1071.

FOR FURTHER INFORMATION CONTACT: Questions regarding the establishment and selection of the IRS Brooklyn, Midwest or Pacific Northwest Citizen Advocacy Panels may be directed to Michael Lewis, Director, IRS Citizen Advocacy Panel, Office of the Assistant Secretary for Management and Chief Financial Officer, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Room 2421, Washington, DC 20220, (202) 622–3068.

SUPPLEMENTARY INFORMATION: The first Citizen Advocacy Panel (CAP) was established in the South Florida Tax District on June 23, 1998. The next Citizen Advocacy Panels will be formed in the Brooklyn, Midwest and Pacific-Northwest Tax Districts. An

independent consulting firm, Booz Allen and Hamilton, Inc., is accepting applications for membership for these next three Panels between June 23 and September 11, 1998. The panels will be operational in the late Fall of 1998.

The mission of the Panels is to provide citizen input into enhancing IRS customer service by identifying problems and making recommendations for improvement with "IRS systems and procedures"; elevate the identified problems to the appropriate IRS official and monitor the progress to effect change; and refer individual taxpayers to the appropriate IRS office for assistance in resolving their problems. The Panels will consist of 7–12 volunteer members who serve at the pleasure of the Secretary of Treasury and will function solely as advisory bodies.

The Panels are seeking applicants who have an interest in good government, a personal commitment to volunteer approximately 100 hours a year, and a desire to help improve IRS customer service. To the extent possible, the IRS would like to ensure a balanced Panel membership representing a cross-section of the tax paying public in the each of the Tax Districts. Potential candidates must be US citizens, legal residents one of the Tax Districts, compliant with Federal, State and Local taxes, and pass an FBI background check.

For the Citizen Advocacy Panels to be most effective, members should have experience in some of the following areas: experience helping people resolve problems with a government organization; experience formulating and presenting proposals; knowledge of taxpayer concerns; experience representing the interests of your community, state or region; experience working with people from diverse backgrounds; and experience helping people resolve disputes.

Booz Allen & Hamilton, Inc., will manage the selection process. Interested applicants should first call the following toll free number, 1–888–449–1071, and complete the initial phone screen. If the applicant passes the phone screen and is still interested, an application package will be sent to them directly. Completed applications will be reviewed, tax background checks and FBI name checks will be conducted, and panel interviews will be conducted with the most qualified candidates. Final candidates will be ranked by experience and suitability and then the Secretary of Treasury will review the recommended candidates and make final selections.

The Brooklyn Tax District consists of the New York State counties of Kings (Borough of Brooklyn), Queens, Nassau and Suffolk. The Midwest Tax District includes the states of Iowa, Nebraska and Wisconsin. The Pacific Northwest Tax District includes the states of Alaska, Hawaii, Oregon and Washington.

Dated: August 6, 1998.

Cathy VanHorn,

CAP Project Manager.

[FR Doc. 98–21558 Filed 8–11–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program, Availability of Application Packages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Availability of TCE Application Packages.

SUMMARY: This document provides notice of the availability of Application Packages for the 1999 Tax Counseling for the Elderly (TCE) Program.

DATES: Application Packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 1999 Tax Counseling for the Elderly (TCE) Program is September 10, 1998.

ADDRESSES: Application Packages may be requested by contacting: Internal Revenue Service, 5000 Ellin Road, Lanham, MD, 20706, Attention: Program Manager, Tax Counseling for the Elderly Program, OP:C:A:E:E, Building C–7, Room 166.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Bradley, OP:C:A:E:E, Building C–7, Room 166, Internal Revenue Service, 5000 Ellin Road, Lanham, MD, 20706. The non-toll-free telephone number is: (202) 283–0188.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in Section 163 of the Revenue Act of 1978, Public Law 95–600, (92 Stat. 12810), November 6, 1978. Regulations were published in the **Federal Register** at 44 FR 72113 on December 13, 1979. Section 163 gives the IRS authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Because applications are being solicited before the FY 1999 budget has been approved, cooperative agreements will be entered into subject to appropriation of funds. Once funded, sponsoring agencies and organizations will receive a grant from the IRS for administrative expenses and to reimburse volunteers for expenses incurred in training and in providing tax return assistance. The Tax Counseling for the Elderly (TCE) Program is referenced in the Catalog of Federal Domestic Assistance in Section 21.006.

Jane Warriner,

National Director, Compliance, Accounts, and Quality Division.

[FR Doc. 98–21559 Filed 8–11–98; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 63, No. 155
Wednesday, August 12, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-272-001]

Nora Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 98–20992, appearing on page 42018, in the issue of Thursday, August 6, 1998, the docket number is added to read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97-1431-002, et al.]

PEC Energy Marketing, Inc., et al.; Electric Rate and Corporate Regulation Filings

Correction

In notice document 98–21019, beginning on page 42026, in the issue of Thursday, August 6, 1998, the docket number is corrected to read as set forth above.

BILLING CODE 1505-01-D

Federal Register

Wednesday
August 12, 1998

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 48 and 31
Federal Acquisition Regulation (FAR); Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 48 and 52

[FAR Case 97–031]

RIN 9000–AH84

Federal Acquisition Regulation; Value Engineering Change Proposals

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to change the sharing periods and rates that contracting officers may establish for individual value engineering change proposals. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before October 13, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), Attn: Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.97–031@gsa.gov.

Please cite FAR case 97–031 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAR case 97–031.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the value engineering change proposal (VECP) guidance in FAR Parts 48 and 52 to allow the contracting officer to increase the sharing period from 36 to 60 months; increase the contractors share of incentive and concurrent savings to 75 percent; and increase the contractors share of collateral savings to 100 percent on a case-by-case basis for each VECP. The contracting officers unilateral decision on each of these aspects is final. This revision is intended to incentivize contractors to submit more value engineering change proposals, by allowing contracting officers to unilaterally increase both the share percentage and the sharing period, so that contractors with meritorious proposals may be given adequate compensation for the effort required to prepare and negotiate individual change proposals.

B. Regulatory Flexibility Act

The proposed changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule could increase the number of VECP settlements negotiated between the Government and private entities. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

The objective of the rule is to change the sharing periods and rates that contracting officers may establish for individual VECPs. By allowing longer sharing periods and allowing increased contractor sharing rates for collateral and concurrent savings, more contractors may find it feasible to submit VECPs. The rule could increase the number of VECP settlements negotiated between the Government and private entities, as the additional flexibility in sharing periods and contractor sharing rates it provides should incentivize contractors to submit more VECPs. Therefore, the rule may apply to all entities, large and small, that propose VECPs under Government contracts.

A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration and may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 97–031), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 48 and 52

Government procurement.

Dated: August 5, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 48 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 48 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 48—VALUE ENGINEERING

2. Section 48.001 is amended by revising the definition "Sharing period" to read as follows:

48.001 Definitions.

* * * * *

Sharing period, as used in this part, means—

(1) The period beginning with acceptance of the first unit incorporating the VECP and ending at the later of—

(i) 36 to 60 months (set at the discretion of the contracting officer for each VECP) after the first unit affected by the VECP is accepted; or

(ii) The last scheduled delivery date of an item affected by the VECP under the instant contract delivery schedule in effect at the time the VECP is accepted (but see 48.102(g)); or

(2) For engineering-development and low-rate-initial-production contracts, a period of between 36 and 60 consecutive months (set at the discretion of the contracting officer for each VECP) that spans the period of highest planned production, based on planning or production documentation at the time the VECP is accepted.

* * * * *

3. Section 48.102 is amended by redesignating paragraphs (g), (h), and (i) as (h), (i), and (j), respectively, adding a new paragraph (g); and further amending newly designated paragraph (h) by removing the last sentence. The added text reads as follows:

48.102 Policies.

* * * * *

(g) Sharing periods and sharing rates are determined on a case-by-case basis by the contracting officer, using the guidelines in the definition of "sharing period" at 48.001 and in 48.104–1. In determining whether to establish a sharing period greater than 36 months or to increase the sharing rate beyond the minimum levels in 48.104–1(a), the contracting officer shall consider the

following, as appropriate, and shall insert supporting rationale in the contract file:

(1) Extent of the change.

(2) Complexity of the change.

(3) Development risk (*e.g.*, contractor's financial risk).

(4) Development cost.

(5) Performance and/or reliability impact.

(6) Production period remaining at the time of VECP acceptance.

(7) Number of units affected.

* * * * *

4. Section 48.103 is amended by adding paragraph (c)(4) to read as follows:

48.103 Processing value engineering change proposals.

* * * * *

(c) * * *

(4) The contracting officer's determination of the duration of the sharing period and the contractor's sharing rate.

5. Section 48.104–1 is amended by revising the table in paragraph (a)(1) to read as follows:

48.104–1 Sharing acquisition savings.

(a) *Supply or service contracts.* (1)

* * *

Government/Contractor Shares of Net Acquisition Savings

[Figures in percent]

Contract type	Sharing arrangement			
	Incentive (Voluntary)		Program requirement (Mandatory)	
	Instant contract rate	Concurrent and future contract rate	Instant contract rate	Concurrent and future contract rate
Fixed-price (includes fixed-price-award-fee; excludes other fixed-price incentive contracts)	*50/50	*50/50	75/25	75/25
Incentive (fixed-price or cost) (other than award fee)	(**)	*50/50	(**)	75/25
Cost-reimbursement (includes cost-plus-award-fee; excludes other cost-type incentive contracts)	***75/25	***75/25	85/15	85/15

* The contracting officer may increase the contractor's sharing rate to as high as 75 percent for each VECP. See 48.102(g)(1) through (7).

** Same sharing arrangement as the contract's profit or fee adjustment formula.

*** The contracting officer may increase the contractor's sharing rate to as high as 50 percent for each VECP. See 48.102(g)(1) through (7).

* * * * *

6. Section 48.104–2 is amended by revising paragraph (b) to read as follows:

48.104–2 Sharing collateral savings.

* * * * *

(b) The contractor's share of collateral savings may range from 20 to 100 percent of the estimated savings to be realized during an average year of use but shall not exceed the contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or $100,000, whichever is greater. The contractor's sharing rate is determined by the contracting officer for each VECP. In determining collateral savings, the contracting officer shall consider any degradation of performance, service life, or capability. (See 48.104–1(a)(4) for payment of collateral savings through the instant contract.)

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Section 52.248–1 is amended in the introductory paragraph by revising the first sentence and removing the last sentence; by revising the date of the clause; and in the clause, in paragraph (b) by revising the definition "Sharing period"; in paragraph (e)(3) by revising the last sentence; in paragraph (f)(3) by revising the table; and in paragraph (j) by revising the first sentence. The revised text reads as follows:

52.248–1 Value Engineering.

As prescribed in 48.201, insert the following clause. * * *

Value Engineering (XXX)

* * * * *

(b) Definitions.

* * * * *

Sharing period, as used in this clause, means—

(1) The period beginning with acceptance of the first unit incorporating the VECP and ending at the later of—

(i) 36 to 60 months (set at the discretion of the Contracting Officer for each VECP) after the first unit affected by the VECP is accepted; or

(ii) The last scheduled delivery date of an item affected by the VECP under this contract's delivery schedule in effect at the time the VECP is accepted; or

(2) For engineering-development and low-rate-initial-production contracts, a period of between 36 and 60 consecutive months (set at the discretion of the Contracting Officer for each VECP) that spans the period of highest planned production, based on planning or production documentation at the time the VECP is accepted.

* * * * *

(e) * * *

(3) * * * The Contracting Officer's unilateral decisions whether to accept or reject all or part of any VECP, as to which of the sharing rates applies, and as to the duration of the sharing period shall be final and not subject to the Disputes clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601–613).

(f) * * *

(3) * * *

CONTRACTOR'S SHARE OF NET ACQUISITION SAVINGS

[Figures in percent]

Contract type	Sharing Arrangement			
	Incentive (Voluntary)		Program requirement (Mandatory)	
	Instant contract rate	Concurrent and future contract rate	instant contract rate	Concurrent and future contract rate
Fixed-price (includes fixed-price-award-fee; excludes other fixed-price incentive contracts)	*50	*50	25	25
Incentive (fixed-price or cost) (other than award fee)	(**)	*50	(**)	25
Cost-reimbursement (includes cost-plus-award-fee; excludes other cost-type incentive contracts)	***25	***25	15	15

* The Contracting Officer may increase the Contractor's sharing rate to as high as 75 percent for each VECP.
** Same sharing arrangement as the contract's profit or fee adjustment formula.
*** The Contracting Officer may increase Contractor's sharing rate to as high as 50 percent for each VECP.

* * * * *

(j) *Collateral savings.* If a VECP is accepted, the instant contract amount shall be increased, as specified in subparagraph (h)(5) of this subsection, by a rate from 20 to 100 percent, as determined by the Contracting Officer, of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset.

* * *

* * * * *

[FR Doc. 98–21441 Filed 8–11–98; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 98–001]

RIN 9000–AI06

Federal Acquisition Regulation; Recruitment Costs Principle

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to revise the "recruitment costs" and the "public relations and advertising costs" cost principles for streamlining purposes. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before October 13, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.98–001@gsa.gov.

Please cite FAR case 98–001 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, 1800 F Street, NW, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 98–001.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule amends FAR 31.205–1, Public relations and advertising costs, and FAR 31.205–34, Recruitment costs, to remove excessive wording and details for streamlining purposes. FAR 31.205–1(d) was revised to indicate that the allowability of recruitment expenses in connection with advertising costs is addressed at FAR 31.205–34. Certain restrictive language at FAR 31.205–34 was removed since the normal standards at FAR 31.201–3, Determining reasonableness, and FAR 31.201–4, Determining allocability, applies to these types of expenses. In addition, FAR 31.205–34(c) has been deleted since excessive compensation is already adequately addressed at FAR 31.205–6, Compensation for personal services.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principles contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart also will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 98–001), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: August 5, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–1 is amended by revising paragraph (d) to read as follows:

31.205–1 Public relations and advertising costs.

* * * * *

(d) The only allowable advertising costs are those that are—

(1) Specifically required by contract, or that arise from requirements of Government contracts, and that are exclusively for—

(i) Acquiring scarce items for contract performance; or

(ii) Disposing of scrap or surplus materials acquired for contract performance;

(2) Costs of activities to promote sales of products normally sold to the U.S. Government, including trade shows, which contain a significant effort to promote exports from the United States. Such costs are allowable, notwithstanding paragraphs (f)(1), (f)(3), (f)(4)(ii), and (f)(5) of this subsection. However, such costs do not include the costs of memorabilia (*e.g.*, models, gifts, and souvenirs), alcoholic beverages, entertainment, and physical facilities that are used primarily for entertainment rather than product promotion; or

(3) Allowable in accordance with 31.205–34.

* * * * *

3. Section 31.205–34 is amended in the introductory text of paragraph (a) by removing "paragraphs (b) and (c) below," and adding "paragraph (b) of this subsection," in its place; revising paragraph (b); and removing paragraph (c) to read as follows:

31.205–34 Recruitment costs.

* * * * *

(b) Help-wanted advertising costs are unallowable if the advertising—

(1) Does not describe specific positions or classes of positions; or

(2) Includes material that is not relevant for recruitment purposes, such as extensive illustrations or descriptions of the company's products or capabilities.

[FR Doc. 98–21443 Filed 8–11–98; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 97–040]

RIN 9000–AH98

Federal Acquisition Regulation; Business Class Airfare

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to revise the "travel costs" cost principle to allow, in certain conditions, business class airfare costs for flights lasting more than 14 hours. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before October 13, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.97–040@gsa.gov.

Please cite FAR case 97–040 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 97–040.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule revises paragraph (d) of FAR 31.205–46, travel costs, to allow, under certain conditions, contractor costs for business class airfare on flights lasting more than 14 hours. This FAR revision will make business class airfare requirements for contractor personnel consistent with business class airfare requirements in the Joint Travel Regulations and the Federal Travel Regulation for Government personnel.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require applications of the cost principle contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 97–040), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: August 5, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–46 is amended by revising paragraph (d) to read as follows:

31.205–46 Travel costs.

* * * * *

(d)(1) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable, except as permitted in paragraph (d)(2) of this section or when it is documented and justified that such standard, coach, or equivalent accommodations—

(i) Excessively prolong travel;

(ii) Require circuitous routing;

(iii) Require travel during unreasonable hours;

(iv) Result in increased costs that would offset transportation savings;

(v) Are not reasonably adequate for the physical or medical needs of the traveler;

(vi) Are not reasonably available to meet mission requirements; or

(vii) Are on a foreign carrier that lacks adequate sanitation or health standards.

(2) Business class airfare costs are allowable when all of the following apply and are documented:

(i) Either the origin or destination point is outside the continental United States.

(ii) Scheduled flight time (including stopovers) is in excess of 14 hours.

(iii) The traveler does not receive a rest stop en route or a rest period upon arrival at the destination point.

* * * * *

[FR Doc. 98–21442 Filed 8–11–98; 8:45 am]

BILLING CODE 6820–EP–P

federal register

Wednesday
August 12, 1998

Part III

Department of Health and Human Services

Office of the Secretary

45 CFR Part 142
Security and Electronic Signature Standards; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 142

[HCFA–0049–P]

RIN 0938–AI57

Security and Electronic Signature Standards

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes standards for the security of individual health information and electronic signature use by health plans, health care clearinghouses, and health care providers. The health plans, health care clearinghouses, and health care providers would use the security standards to develop and maintain the security of all electronic individual health information. The electronic signature standard is applicable only with respect to use with the specific transactions defined in the Health Insurance Portability and Accountability Act of 1996, and when it has been determined that an electronic signature must be used.

The use of these standards would improve the Medicare and Medicaid programs, and other Federal health programs and private health programs, and the effectiveness and efficiency of the health care industry in general. This rule would implement some of the requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 13, 1998.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–0049–P, P.O. Box 26585, Baltimore, MD 21207–0519.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments may also be submitted electronically to the following e-mail address: security@osaspe.dhhs.gov. For e-mail comment procedures, see the beginning of **SUPPLEMENTARY INFORMATION.** For further information on ordering copies of the **Federal Register** containing this document and on electronic access, see the beginning of **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: John Parmigiani, (410) 786–2976.

SUPPLEMENTARY INFORMATION:

E-Mail, Comments, Procedures, Availability of Copies, and Electronic Access

E-mail comments should include the full name, postal address, and affiliation (if applicable) of the sender and must be submitted to the referenced address to be considered. All comments should be incorporated in the e-mail message because we may not be able to access attachments.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–0049–P and the specific section or sections of the proposed rule. Both electronic and written comments received by the time and date indicated above will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890). Electronic and legible written comments will also be posted, along with this proposed rule, at the following web site: http://aspe.os.dhhs.gov/admnsimp/.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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I. Background

[Please label written or e-mailed comments about this section with the subject: Background]

In order to administer their programs, the Department of Health and Human Services, other Federal agencies, State Medicaid agencies, private health plans, health care providers, and health care clearinghouses must assure their customers (such as patients, insured, providers, and health care plans) that the confidentiality and privacy of health care information they electronically collect, maintain, use, or transmit is secure. Security of health information is especially important when health information can be directly linked to an individual.

Confidentiality is threatened not only by the risk of improper access to electronically stored information, but also by the risk of interception during electronic transmission of the information.

In addition to the need to ensure electronic health care information is secure and confidential, there is a potential need to associate signature capability with information being electronically stored or transmitted. Today, there are numerous forms of electronic signatures, ranging from biometric devices to digital signature. To satisfy the legal and time-tested characteristics of a written signature, however, an electronic signature must do the following:

- Identify the signatory individual,
- Assure the integrity of a document's content, and
- Provide for nonrepudiation; that is, strong and substantial evidence that will make it difficult for the signer to claim that the electronic representation is not valid. Currently, the only technically mature electronic signature meeting the above criteria is the digital signature. There is no national standard for security or electronic signatures. Of necessity, each health care provider, health care plan, and health care entity

has defined its own security requirements.

A. Legislation

The Congress included provisions to address the need for security and electronic signature standards and other administrative simplification issues in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, which was enacted on August 21, 1996. Through subtitle F of title II of that law, the Congress added to title XI of the Social Security Act a new part C, entitled "Administrative Simplification." (Public Law 104–191 affects several titles in the United States Code. Hereafter, we refer to the Social Security Act as the Act; we refer to the other laws cited in this document by their names.) The purpose of this part C is to improve the Medicare and Medicaid programs, in particular, and the efficiency and effectiveness of the health care system, in general, by encouraging the development of a health information system through the establishment of standards and requirements to facilitate the electronic maintenance and transmission of certain health information.

Part C of title XI of the Act consists of sections 1171 through 1179. These sections define various terms and impose several requirements on HHS, health plans, health care clearinghouses, and certain health care providers concerning electronic transmission of health information.

The first section, section 1171 of the Act, establishes definitions for purposes of part C of title XI for the following terms: code set, health care clearinghouse, health care provider, health information, health plan, individually identifiable health information, standard, and standard setting organization.

Section 1172 of the Act makes any standard adopted under part C applicable to: (1) Health plans, (2) health care clearinghouses, and (3) health care providers that transmit any health information in electronic form in connection with the transactions referred to in section 1173(a)(1) of the Act. The security standard to be adopted under Part C is not restricted to the transactions referred to in section 1173(a)(1) of the Act, but is applicable to any health information pertaining to an individual that is electronically maintained or transmitted. This section also contains the following requirements concerning standard setting:

- The Secretary may adopt a standard developed, adopted, or modified by a standard setting organization (that is, an organization accredited by the American National Standards Institute (ANSI)) that has consulted with the National Uniform Billing Committee (NUBC), the National Uniform Claim Committee (NUCC), Workgroup for Electronic Data Interchange (WEDI), and the American Dental Association (ADA).
- The Secretary may also adopt a standard other than one established by a standard setting organization, if the different standard will reduce costs for health care providers and health plans, the different standard is promulgated through negotiated rulemaking procedures, and the Secretary consults with each of the above-named groups.
- If no standard has been adopted by any standard setting organization, the Secretary must rely on the recommendations of the National Committee on Vital and Health Statistics (NCVHS) and consult with each of the above-named groups.

In complying with the requirements of part C of title XI, the Secretary must rely on the recommendations of the NCVHS, consult with appropriate State, Federal, and private agencies or organizations, and publish the NCVHS recommendations in the **Federal Register**.

Paragraph (a) of section 1173 of the Act requires that the Secretary adopt standards for financial and administrative transactions, and data elements for those transactions, to enable health information to be exchanged electronically. Standards are required for the following transactions: health claims, health encounter information, health claims attachments, health plan enrollments and disenrollments, health plan eligibility, health care payment and remittance advice, health plan premium payments, first report of injury, health claim status, and referral certification and authorization. In addition, the Secretary is required to adopt standards for any other financial and administrative transactions that are determined to be appropriate by the Secretary.

Paragraph (b) of section 1173 of the Act requires the Secretary to adopt standards for unique health identifiers for all individuals, employers, health plans, and health care providers and requires further that the adopted standards specify for what purposes unique health identifiers may be used.

Paragraphs (c) through (f) of section 1173 of the Act require the Secretary to establish standards for code sets for each data element for each health care transaction listed above, security standards for health care information systems, standards for electronic signatures (established together with the Secretary of Commerce), and standards for the transmission of data elements needed for the coordination of benefits and sequential processing of claims. Compliance with electronic signature standards will be deemed to satisfy both State and Federal requirements for written signatures with respect to the transactions listed in paragraph (a) of section 1173 of the Act.

In section 1174 of the Act, the Secretary is required to establish standards for all of the above transactions, except claims attachments, by February 21, 1998. The standards for claims attachments must be established by February 21, 1999. Generally, after a standard is established, it cannot be changed during the first year after adoption except for changes that are necessary to permit compliance with the standard. Modifications to any of these standards may be made after the first year, but not more frequently than once every 12 months. The Secretary must also ensure that procedures exist for the routine maintenance, testing, enhancement, and expansion of code sets and that there are crosswalks from prior versions.

Section 1175 of the Act prohibits health plans from refusing to process or delaying the processing of a transaction that is presented in standard format. The Act's requirements are not limited to health plans; however, each person to whom a standard or implementation specification applies is required to comply with the standard within 24 months (or 36 months for small health plans) of its adoption. A health plan or other entity may, of course, comply voluntarily before the effective date. A person may comply by using a health care clearinghouse to transmit or receive the standard transactions. Compliance with modifications to standards or implementation specifications must be accomplished by a date designated by the Secretary. This date may not be earlier than 180 days from the notice of change.

Section 1176 of the Act establishes a civil monetary penalty for violation of the provisions in part C of title XI of the Act, subject to several limitations. Penalties may not be more than $100 per person per violation and not more than $25,000 per person for violations of a single standard for a calendar year. The procedural provisions in section 1128A of the Act, "Civil Monetary Penalties," are applicable.

Section 1177 of the Act establishes penalties for a knowing misuse of unique health identifiers and individually identifiable health information: (1) A fine of not more than $50,000 and/or imprisonment of not

more than 1 year; (2) if misuse is "under false pretenses," a fine of not more than $100,000 and/or imprisonment of not more than 5 years; and (3) if misuse is with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, a fine of not more than $250,000 and/or imprisonment of not more than 10 years. Note that these penalties do not affect any other penalties which may be imposed by other Federal programs, including ERISA.

Under section 1178 of the Act, the provisions of part C of title XI of the Act, as well as any standards established under them, supersede any State law that is contrary to them. However, the Secretary may, for statutorily-specified reasons, waive this provision.

Finally, section 1179 of the Act makes the above provisions inapplicable to financial institutions or anyone acting on behalf of a financial institution when "authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting payments for a financial institution."

(Concerning this last provision, the conference report, in its discussion on section 1178, states:

"The conferees do not intend to exclude the activities of financial institutions or their contractors from compliance with the standards adopted under this part if such activities would be subject to this part. However, conferees intend that this part does not apply to use or disclosure of information when an individual utilizes a payment system to make a payment for, or related to, health plan premiums or health care. For example, the exchange of information between participants in a credit card system in connection with processing a credit card payment for health care would not be covered by this part. Similarly sending a checking account statement to an account holder who uses a credit or debit card to pay for health care services, would not be covered by this part. However, this part does apply if a company clears health care claims, the health care claims activities remain subject to the requirements of this part.") (H.R. Rep. No. 736, 104th Cong., 2nd Sess. 268–269 (1996))

B. Process for Developing National Standards

The Secretary has formulated a five-part strategy for developing and implementing the standards mandated under part C of title XI of the Act:

1. To ensure necessary interagency coordination and required interaction with other Federal departments and the private sector, establish interdepartmental implementation teams to identify and assess potential standards for adoption. The subject matter of the teams includes claims/encounters, identifiers, enrollment/eligibility, systems security and electronic signature, and medical coding classification. Another team addresses cross-cutting issues and coordinates the subject matter teams. The teams consult with external groups such as the NCVHS' Workgroup on Data Standards, WEDI, the ANSI's Healthcare Informatics Standards Board (HISB), the NUCC, the NUBC, and the ADA. The teams are charged with developing regulations and other necessary documents and making recommendations for the various standards to the HHS Data Council through its Committee on Health Data Standards. (The HHS Data Council is the focal point for consideration of data policy issues. It reports directly to the Secretary and advises the Secretary on data standards and privacy issues.)

2. Develop recommendations for standards to be adopted.

3. Publish proposed rules in the **Federal Register** describing the standards. Each proposed rule provides the public with a 60-day comment period.

4. Analyze public comments and publish the final rules in the **Federal Register**.

5. Distribute standards and coordinate preparation and distribution of implementation guides.

This strategy affords many opportunities for involvement of interested and affected parties in standards development and adoption by enabling them to:

- Participate with standards setting organizations.
- Provide written input to the NCVHS.
- Provide written input to the Secretary of HHS.
- Provide testimony at NCVHS" public meetings.
- Comment on the proposed rules for each of the proposed standards.
- Invite HHS staff to meetings with public and private sector organizations or meet directly with senior HHS staff involved in the implementation process.

The implementation teams charged with reviewing standards for designation as required national standards under the statute have defined, with significant input from the health care industry, a set of principles for guiding choices for the standards to be adopted by the Secretary. These principles are based on direct specifications in HIPAA, the purpose of the law, and generally desirable principles. To be designated as an HIPAA standard, each standard should:

1. Improve the efficiency and effectiveness of the health care system by leading to cost reductions for or improvements in benefits from electronic health care transactions.

2. Meet the needs of the health data standards user community, particularly health care providers, health plans, and health care clearinghouses.

3. Be consistent and uniform with the other HIPAA standards—their data element definitions and codes and their privacy and security requirements—and, secondarily, with other private and public sector health data standards.

4. Have low additional development and implementation costs relative to the benefits of using the standard.

5. Be supported by an ANSI-accredited standards developing organization or other private or public organization that will ensure continuity and efficient updating of the standard over time.

6. Have timely development, testing, implementation, and updating procedures to achieve administrative simplification benefits faster.

7. Be technologically independent of the computer platforms and transmission protocols used in electronic health transactions, except when they are explicitly part of the standard.

8. Be precise and unambiguous, but as simple as possible.

9. Keep data collection and paperwork burdens on users as low as is feasible.

10. Incorporate flexibility to adapt more easily to changes in the health care infrastructure (such as new services, organizations, and provider types) and information technology.

A master data dictionary providing for common data definitions across the standards selected for implementation under HIPAA will be developed and maintained. We intend for the data element definitions to be precise, unambiguous, and consistently applied. The transaction-specific reports and general reports from the master data dictionary will be readily available to the public. At a minimum, the information presented will include data element names, definitions, and appropriate references to the transactions where they are used.

This proposed rule would establish the security standard and electronic signature standard for health care information and individually identifiable health care information maintained or transmitted electronically. The remaining standards are grouped, to the extent possible, by subject matter and audience in other regulations. We anticipate publishing

several separate regulation documents to promulgate the remaining standards required under HIPAA.

II. Provisions of this Proposed Rule

[Please label written comments or e-mailed comments about this section with the subject: Introduction/Applicability]

We propose to add a new part to title 45 of the Code of Federal Regulations for health plans, health care providers, and health care clearinghouses in general. The new part would be part 142 of title 45 and would be titled "Administrative Requirements." Subpart A would contain the general provisions for this part, including the general definitions and general requirements for health plans. Subpart C would contain provisions specific to securing health information used in any electronic transmission or stored format.

In this proposed rule, we propose a standard for security of health information. This rule would establish that health plans, health care clearinghouses, and health care providers must have the security standard in place to comply with the statutory requirement that health care information and individually identifiable health care information be protected to ensure privacy and confidentiality when health information is electronically stored, maintained, or transmitted. The Congress mandated a separate standard for electronic signature, therefore, this proposed security standard also addresses the selected standard for electronic signature. The proposed security standard does not require the use of an electronic signature, but specifies the standard for an electronic signature that must be followed if such a signature is used. If an entity elects to use an electronic signature, it must comply with the electronic signature standard.

A. Applicability

With the exception of the security provisions, section 262 of HIPAA applies to any health plan, any health care clearinghouse, and any health care provider that transmits any health information in electronic form in connection with transactions referred to in section 1173(a)(1) of the Act. The security provisions of section 262 of HIPAA apply to any health plan, any health care clearinghouse, and any health care provider that electronically maintains or transmits any health information relating to an individual.

Our proposed rules (at 45 CFR 142.102) would apply to the health plans and health care clearinghouses as well, but we would clarify the statutory language in our regulations for health care providers. With the exception of the security regulation, we would have the regulations apply to any health care provider only when electronically transmitting any of the transactions to which section 1173(a)(1) of the Act refers.

Electronic transmissions would include transactions using all media, even when the information is physically moved from one location to another using magnetic tape, disk, or compact disc (cd) media. Transmissions over the Internet (wide-open), Extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, and private networks are all included. Telephone voice response and "faxback" (a request for information made via voice using a fax machine and requested information returned via that same machine as a fax) systems would not be included. We solicit comments concerning any adverse impact the above statement concerning voice response or faxback may have upon the security of the health information in the commenter's care.

With the exception of the security regulation, our regulations would apply to health care clearinghouses when transmitting transactions to, and receiving transactions from, a health care provider or health plan that transmits and receives standard transactions (as defined under "transaction") and at all times when transmitting to or receiving electronic transactions from another health care clearinghouse. The security regulation would apply to health care clearing houses electronically maintaining or transmitting any health information pertaining to an individual.

Entities that offer on-line interactive transmission must comply with the standards. The Hypertext Markup Language (HTML) interaction between a server and a browser by which the data elements of a transaction are solicited from a user would not have to use the standards (with the exception of the security standard), although the data content must be equal to that required for the standard. Once the data elements are assembled into a transaction by the server, the transmitted transaction would have to comply with the standards.

With the exception of the security portion, the law would apply to each health care provider when transmitting or receiving any of the specified electronic transactions. The security regulation would apply to each health care provider electronically maintaining or transmitting any health information pertaining to an individual.

The law applies to health plans for all transactions. Section 142.104 would contain the following provisions (from section 1175 of the Act):

If a person desires to conduct a transaction (as defined in § 142.103) with a health plan as a standard transaction, the following apply:

(1) The health plan may not refuse to conduct the transaction as a standard transaction.

(2) The health plan may not delay the transaction or otherwise adversely affect, or attempt to adversely affect, the person or the transaction on the basis that the transaction is a standard transaction.

(3) The information transmitted and received in connection with the transaction must be in the form of standard data elements of health information.

As a further requirement, we would provide that a health plan that conducts transactions through an agent assure that the agent meets all the requirements of part 142 that apply to the health plan.

Section 142.105 would state that a person or other entity may meet the transaction requirements of § 142.104 by either—

(1) Transmitting and receiving standard data elements, or

(2) Submitting nonstandard data elements to a health care clearinghouse for processing into standard data elements and transmission by the health care clearinghouse and receiving standard data elements through the clearinghouse.

Health care clearinghouses would be able to accept nonstandard transactions for the sole purpose of translating them into standard transactions for sending customers and would be able to accept standard transactions and translate them into nonstandard formats for receiving customers. We would state in § 142.105 that the transmission of nonstandard transactions, under contract, between a health plan or a health care provider and a health care clearinghouse would not violate the law.

With the exception of the security standard, transmissions within a corporate entity would not be required to comply with the standards. A hospital that is wholly owned by a managed care company would not have to use the transaction standards to pass encounter information back to the home office, but it would have to use the standard claims transaction to submit a claim to another payer. Another example might be transactions within Federal agencies and their contractors and between State agencies within the same State. For example, Medicare enters into contracts with insurance

companies and common working file sites that process Medicare claims using government furnished software. There is constant communication, on a private network, between HCFA Central Office and the Medicare carriers, intermediaries, and common working file sites. This communication may continue in nonstandard mode. However, these contractors would be required to comply with the transaction standards when exchanging any of the transactions covered by HIPAA with an entity outside these "corporate" boundaries.

The security standard is applicable to all health care information electronically maintained or used in an electronic transmission, regardless of format (standard transaction or a proprietary format); no distinction is made between internal corporate entity communication or communication external to the corporate entity.

Although there are situations in which the use of the standards is not required (for example, health care providers may continue to submit paper claims and employers are not required to use any of the standard transactions), we stress that a standard may be used voluntarily in any situation in which it is not required.

This proposed regulation would not mandate the use of electronic signatures with any specific transaction at this time. Instead, the regulation proposes that whenever an electronic signature is required for an electronic transaction by law, regulation, or contract, the signature must meet the standard established in the regulation at § 142.310. Use of this standard would satisfy any Federal or State requirement for a signature, either electronic or on paper.

We note that the ANSI X12N standards for individual transactions which have been proposed for adoption as national standards in a separate proposed rule do not require the use of electronic signatures. Standards for additional transactions that the Secretary may propose for adoption in the future, including one for claims attachments, may contain such requirements. We solicit comments on whether electronic signatures should be required for any specific transactions or under specific circumstances and what effect such requirements would have on electronic health care transactions.

We also note that the NCVHS is required by HIPAA to report to the Secretary recommendations and legislative proposals for uniform data standards for patient medical record information and the electronic exchange of such information, with the implication that HHS should rely on such recommendations to adopt such standards or propose the passage of such legislation by the Congress. We solicit comments on whether the standard proposed below for electronic signatures would be appropriate for consideration as part of such standards.

B. Definitions

[Please label written or e-mailed comments about this section with the subject: Definitions]

Section 1171 of the Act defines several terms and our proposed rules would, for the most part, simply restate the law. The terms that we are defining in this proposed rule follow:

1. Code Set

We would define "code set" as section 1171(1) of the Act does: "code set" means any set of codes used for encoding data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes.

2. Health Care Clearinghouse

We would define "health care clearinghouse" as section 1171(2) of the Act does, but we are adding a further, clarifying sentence. The statute defines a "health care clearinghouse" as a public or private entity that processes or facilitates the processing of nonstandard data elements of health information into standard data elements. We would further explain that such an entity is one that currently receives health care transactions from health care providers or other entities, translates the data from a given format into one acceptable to the intended recipient and forwards the processed transaction to appropriate payers and clearinghouses, as necessary, for further action.

There are currently a number of private clearinghouses that perform this function for health care providers. For purposes of this rule, we would consider billing services, repricing companies, community health management information systems or community health information systems, value-added networks, and switches that perform this function to be health care clearinghouses.

3. Health Care Provider

As defined by section 1171(3) of the Act, a "health care provider" is a provider of services as defined in section 1861(u) of the Act, a provider of medical or other health services as defined in section 1861(s) of the Act, and any other person who furnishes health care services or supplies. Our regulations would define "health care provider" as the statute does and clarify that the definition of a health care provider is limited to those entities that furnish, or bill and are paid for, health care services in the normal course of business.

For a more detailed discussion of the definition of health care provider, we refer the reader to our proposed rule, HCFA–0045-P, Standard Health Care Provider, 63 FR 25320, published May 7, 1998.

4. Health Information

"Health information," as defined in section 1171 of the Act, means any information, whether oral or recorded in any form or medium, that—

- Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
- Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

We propose the same definition for our regulations.

5. Health Plan

We propose that a "health plan" be defined essentially as section 1171 of the Act defines it. Section 1171 of the Act cross refers to definitions in section 2791 of the Public Health Service Act (as added by Public Law 104–191, 42 U.S.C. 300gg-91); we would incorporate those definitions as currently stated into our proposed definitions for the convenience of the public. We note that the term "health plan" is also defined in other statutes, such as the Employee Retirement Income Security Act of 1974 (ERISA). Our definitions are based on the roles of plans in conducting administrative transactions, and any differences should not be construed to affect other statutes.

For purposes of implementing the provisions of administrative simplification, a "health plan" would be an individual or group health plan that provides, or pays the cost of, medical care. This definition includes, but is not limited to, the 13 types of plans listed in the statute. On the other hand, plans such as property and casualty insurance plans and workers compensation plans, which may pay health care costs in the course of administering nonhealth care benefits, are not considered to be health plans in the proposed definition of health plan. Of course, these plans may voluntarily adopt these standards for their own business needs. At some

future time, the Congress may choose to expressly include some or all of these plans in the list of health plans that must comply with the standards.

Health plans often carry out their business functions through agents, such as plan administrators (including third party administrators), entities that are under "administrative services only" (ASO) contracts, claims processors, and fiscal agents. These agents may or may not be health plans in their own right; for example, a health plan acting as another health plan's agent as another line of business. As stated earlier, a health plan that conducts HIPAA transactions through an agent is required to assure that the agent meets all HIPAA requirements that apply to the plan itself.

"Health plan" includes the following, singly or in combination:

a. "Group health plan" (as currently defined by section 2791(a) of the Public Health Service Act). A group health plan is a plan that has 50 or more participants (as the term "participant" is currently defined by section 3(7) of ERISA) or is administered by an entity other than the employer that established and maintains the plan. This definition includes both insured and self-insured plans. We define "participant" separately below.

Section 2791(a)(1) of the Public Health Service Act defines "group health plan" as an employee welfare benefit plan (as defined in current section 3(1) of ERISA) to the extent that the plan provides medical care, including items and services paid for as medical care, to employees or their dependents directly or through insurance, or otherwise.

b. "Health insurance issuer" (as currently defined by section 2791(b) of the Public Health Service Act).

Section 2791(b) of the Public Health Service Act currently defines a "health insurance issuer" as an insurance company, insurance service, or insurance organization that is licensed to engage in the business of insurance in a State and is subject to State law that regulates insurance.

c. "Health maintenance organization" (as currently defined by section 2791(b) of the Public Health Service Act).

Section 2791(b) of the Public Health Service Act currently defines a "health maintenance organization" as a Federally qualified health maintenance organization, an organization recognized as such under State law, or a similar organization regulated for solvency under State law in the same manner and to the same extent as such a health maintenance organization. These organizations may include preferred provider organizations, provider sponsored organizations, independent practice associations, competitive medical plans, exclusive provider organizations, and foundations for medical care.

d. Part A or Part B of the Medicare program (title XVIII of the Act).

e. The Medicaid program (title XIX of the Act).

f. A "Medicare supplemental policy" as defined under section 1882(g)(1) of the Act.

Section 1882(g)(1) of the Act defines a "Medicare supplemental policy" as a health insurance policy that a private entity offers a Medicare beneficiary to provide payment for expenses incurred for services and items that are not reimbursed by Medicare because of deductible, coinsurance, or other limitations under Medicare. The statutory definition of a Medicare supplemental policy excludes a number of plans that are generally considered to be Medicare supplemental plans, such as health plans for employees and former employees and for members and former members of trade associations and unions. A number of these health plans may be included under the definitions of "group health plan" or "health insurance issuer", as defined in paragraphs a. and b. above.

g. A "long-term care policy," including a nursing home fixed-indemnity policy. A "long-term care policy" is considered to be a health plan regardless of how comprehensive it is. We recognize the long-term care insurance segment of the industry is largely unautomated and we welcome comments regarding the impact of HIPAA on the long-term care segment.

h. An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers. This includes plans that are referred to as multiple employer welfare arrangements ("MEWAs").

i. The health care program for active military personnel under title 10 of the United States Code.

j. The veterans health care program under chapter 17 of title 38 of the United States Code.

This health plan primarily furnishes medical care through hospitals and clinics administered by the Department of Veterans Affairs for veterans with a service-connected disability that is compensable. Veterans with nonservice-connected disabilities (and no other health benefit plan) may receive health care under this health plan to the extent resources and facilities are available.

k. The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as defined in 10 U.S.C. 1072(4).

CHAMPUS primarily covers services furnished by civilian medical providers to dependents of active duty members of the uniformed services and retirees and their dependents under age 65.

l. The Indian Health Service program under the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*).

This program furnishes services, generally through its own health care providers, primarily to persons who are eligible to receive services because they are of American Indian or Alaskan Native descent.

m. The Federal Employees Health Benefits Program under 5 U.S.C. chapter 89.

This program consists of health insurance plans offered to active and retired Federal employees and their dependents. Depending on the health plan, the services may be furnished on a fee-for-service basis or through a health maintenance organization.

(**Note:** Although section 1171(5)(M) of the Act refers to the "Federal Employees Health Benefit Plan," this and any other rules adopting administrative simplification standards will use the correct name, the Federal Employees Health Benefits Program. One health plan does not cover all Federal employees; there are over 350 health plans that provide health benefits coverage to Federal employees, retirees, and their eligible family members. Therefore, we will use the correct name, the Federal Employees Health Benefits Program, to make clear that the administrative simplification standards apply to all health plans that participate in the Program.)

n. Any other individual or group health plan, or combination thereof, that provides or pays for the cost of medical care.

We would include a fourteenth category of health plan in addition to those specifically named in HIPAA, as there are health plans that do not readily fit into the other categories but whose major purpose is providing health benefits. The Secretary would determine which of these plans are health plans for purposes of title II of HIPAA. This category would include the Medicare Plus Choice plans that will become available as a result of section 1855 of the Act as amended by section 4001 of the Balanced Budget Act of 1997 (Public Law 105–33) to the extent that these health plans do not fall under any other category.

6. Small Health Plan

We would define a "small health plan" as a group health plan with fewer than 50 participants.

The HIPAA does not define a "small health plan" but instead leaves the definition to be determined by the Secretary. The Conference Report suggests that the appropriate definition of a "small health plan" is found in current section 2791(a) of the Public Health Service Act, which is a group health plan with fewer than 50 participants. We would also define small individual health plans as those with fewer than 50 participants.

7. Individually Identifiable Health Information

Section 1171(6) states the term "individually identifiable health information" means any information, including demographic information collected from an individual, that—

a. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

b. Relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and

(i) Identifies the individual, or

(ii) With respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

8. Standard

Section 1171 of the Act defines "standard," when used with reference to a data element of health information or a transaction referred to in section 1173(a)(1) of the Act, as any such data element or transaction that meets each of the standards and implementation specifications adopted or established by the Secretary with respect to the data element or transaction under sections 1172 through 1174 of the Act.

Under our definition, the security standard would be a set of requirements adopted or established to preserve and maintain the confidentiality and privacy of electronically stored, maintained, or transmitted health information promulgated either by an organization accredited by the ANSI or HHS.

9. Transaction

"Transaction" would mean the exchange of information between two parties to carry out financial and administrative activities related to health care. A transaction would be (a) any of the transactions listed in section 1173(a)(2) of the Act, and (b) any determined appropriate by the Secretary in accordance with section 1173(a)(1)(B) of the Act. We present them below in the order in which we propose to list them in the regulations text.

A "transaction" would mean any of the following:

a. Health claims or equivalent encounter information. This transaction may be used to submit health care claim billing information, encounter information, or both, from health care providers to payers, either directly or via intermediary billers and claims clearinghouses.

b. Health care payment and remittance advice. This transaction may be used by a health plan to make a payment to a financial institution for a health care provider (sending payment only), to send an explanation of benefits remittance advice directly to a health care provider (sending data only), or to make payment and send an explanation of benefits remittance advice to a health care provider via a financial institution (sending both payment and data).

c. Coordination of benefits. This transaction set can be used to transmit health care claims and billing payment information between payers with different payment responsibilities where coordination of benefits is required or between payers and regulatory agencies to monitor the furnishing, billing, and/or payment of health care services within a specific health care/insurance industry segment.

In addition to the nine electronic transactions specified in section 1173(a)(2) of the Act, section 1173(f) directs the Secretary to adopt standards for transferring standard data elements among health plans for coordination of benefits. This particular provision does not state that these should be standards for electronic transfer of standard data elements among health plans. However, we believe that the Congress, when writing this provision, intended for these standards to be an electronic form of transactions for coordination of benefits and sequential processing of claims. The Congress expressed its intent on these matters generally in section 1173(a)(1)(B) of the Act, where the Secretary is directed to adopt "other financial and administrative transactions * * * consistent with the goals of improving the operation of the health care system and reducing administrative costs."

d. Health claim status. This transaction may be used by health care providers and recipients of health care products or services (or their authorized agents) to request the status of a health care claim or encounter from a health plan.

e. Enrollment and disenrollment in a health plan. This transaction may be used to establish communication between the sponsor of a health benefit and the payer. It provides enrollment data, such as subscriber and dependents, employer information, and primary care health care provider information. A sponsor is the backer of the coverage, benefit, or product. A sponsor can be an employer, union, government agency, association, or insurance company. The health plan refers to an entity that pays claims, administers the insurance product or benefit, or both.

f. Eligibility for a health plan. This transaction may be used to inquire about the eligibility, coverage, or benefits associated with a benefit plan, employer, plan sponsor, subscriber, or a dependent under the subscriber's policy. It also can be used to communicate information about or changes to eligibility, coverage, or benefits from information sources (such as insurers, sponsors, and payers) to information receivers (such as physicians, hospitals, third party administrators, and government agencies).

g. Health plan premium payments. This transaction may be used by, for example, employers, employees, unions, and associations to make and keep track of payments of health plan premiums to their health insurers. This transaction may also be used by a health care provider, acting as liaison for the beneficiary, to make payment to a health insurer for coinsurance, copayments, and deductibles.

h. Referral certification and authorization. This transaction may be used to transmit health care service referral information between health care providers, health care providers furnishing services, and payers. It can also be used to obtain authorization for certain health care services from a health plan.

i. First report of injury. This transaction may be used to report information pertaining to an injury, illness, or incident to entities interested in the information for statistical, legal, claims, and risk management processing requirements.

j. Health claims attachments. This transaction may be used to transmit health care service information, such as subscriber, patient, demographic, diagnosis, or treatment data for the purpose of a request for review, certification, notification, or reporting the outcome of a health care services review.

k. Other transactions as the Secretary may prescribe by regulation.

Under section 1173(a)(1)(B) of the Act, the Secretary may adopt standards, and data elements for those standards, and for other financial and administrative transactions deemed appropriate by the Secretary. These transactions would be consistent with the goals of improving the operation of the health care system and reducing administrative costs.

C. Effective Dates—General

[Please label written comments or e-mailed comments about this section with the subject: effective dates]

In general, any given standard would be effective 24 months after the effective date (36 months for small health plans) of the final rule for that standard. Because there are other standards to be established than those in this proposed rule, we specify the date for a given standard under the subpart for that standard.

Health plans would be required by part 142 to comply with our requirements as follows:

1. Each health plan that is not a small plan would have to comply with the requirements of part 142 no later than 24 months after the effective date of the final rule.

2. Each small health plan would have to comply with the requirements of part 142 no later than 36 months after the effective date of the final rule.

Health care providers and health care clearinghouses would be required to begin using the standard by 24 months after the effective date of the final rule. (The effective date of the final rule will be 60 days after the final rule is published in the **Federal Register**.)

Provisions of trading partner agreements that stipulate data content, format definitions, or conditions that conflict with the adopted standard would be invalid beginning 36 months from the effective date of the final rule for small health plans, and 24 months from the effective date of the final rule for all other health plans.

If the HHS adopts a modification to an implementation specification or a standard, the implementation date of the modification would be no earlier than the 180th day following the adoption of the modification. HHS would determine the actual date, taking into account the time needed to comply due to the nature and extent of the modification. HHS would be able to extend the time for compliance for small health plans. This provision would be at § 142.106.

Any of the health plans, health care clearinghouses, and health care providers may implement a given standard earlier than the date specified in the subpart created for that standard. We realize that this may create some problems temporarily, as early implementers would have to be able to continue using old standards until the new one must, by law, be in place.

D. Security Standard

[Please label written comments or e-mailed comments about this section with the subject: Security Standard—General]

Section 142.308 would set forth the security standard. There is no recognized single standard that integrates all the components of security (administrative procedures, physical safeguards, technical security services, and technical mechanisms) that must be in place to preserve health information confidentiality and privacy as defined in the law. Therefore, we are designating a new, comprehensive standard, which defines the security requirements to be fulfilled.

In fact, there are numerous security guidelines and standards in existence today, focusing on the different techniques available for implementing the various aspects of security. We thoroughly researched the existing guidelines and standards, and consulted extensively with the organizations that developed them. A list of the organizations with which we consulted can be found in section G. below. As a result of these consultations and our research, we identified several high-level concepts on which the standard is based:

- The standard must be comprehensive.
- Consultation with standards development organizations, such as ANSI-accredited organizations, as well as business interest organizations, revealed the need for a standard that addressed all aspects of security in a concerted fashion. The HISB noted in its report to the Secretary that:

"Comprehensive adoption of security standards in health care, not piecemeal implementation, is advocated to provide security to data that is exchanged between health care entities.

By definition, if a system or communications between two systems, were implemented with technology(s) meeting standards in a general system security framework (Identification and Authentication; Authorization and Access Control; Accountability; Integrity and Availability; Security of Communication; and Security Administration.) that system would be essentially secure.

* * * no single standards development organization (SDO) is addressing all aspects of health care information security and confidentiality, and specifically, no single SDO is developing standards that cover every category of the security framework." [Page 189]

- The standard must be technology-neutral.

Our proposed standard does not reference or advocate specific technology because security technology is changing quickly. We want to give providers/plans/clearinghouses flexibility to choose their own technical solutions. A standard that is dependent on a specific technology or technologies would not be flexible enough to use future advances.

- The standard must be scalable.

The standard must be able to be implemented by all the affected entities, from the smallest provider to the largest clearinghouse. A single approach would be neither economically feasible nor effective in safeguarding health data. For example, in a small physician practice, a contingency plan for system emergencies might be only a few pages long, and cover issues such as where backup diskettes must be stored, and the location of a backup personal computer (PC). At a large health plan, the contingency plan might consist of multiple volumes and cover issues such as remote hot site operations and secure off-site storage of electronic media. The physician office solution would not protect the large plan's data, and the plan's solution would not be economically feasible (or necessary) for the physician office. Moreover, the statute specifically directed the Secretary to take into account the needs and capabilities of small and rural health care providers, as those terms are defined by the Secretary. The scalability of our approach addresses this direction. We are not proposing specific definitions of "small" and "rural" health care providers because the statute provides no exemptions or special benefits for these two groups. However, we solicit comments on the necessity to define these terms.

General Approach

We would define the security standard as a set of requirements with implementation features that providers, plans, and clearinghouses must include in their operations to assure that electronic health information pertaining to an individual remains secure. The implementation features address specific aspects of the requirements. The standard does not reference or advocate specific technology. This would allow the security standard to be stable, yet flexible enough to take advantage of state-of-the-art technology.

The standard does not address the extent to which a particular entity should implement the specific features. Instead, we would require that each affected entity assess its own security needs and risks and devise, implement, and maintain appropriate security to address its business requirements. How individual security requirements would be satisfied and which technology to use would be business decisions that each organization would have to make.

The recommendations contained in the National Research Council's 1997 report *For The Record: Protecting Electronic Health Information* support our approach to the development of a security standard. This report presents findings and recommendations related to health data security, and is widely viewed as an authoritative and comprehensive source on the subject. The report concludes that appropriate security practices are highly dependent on individual circumstances, but goes on to suggest that:

"It is therefore not possible to prescribe in detail specific practices for all organizations; rather, each organization must analyze its systems, vulnerabilities, risks, and resources to determine optimal security measures. Nevertheless, the committee believes that a set of practices can be articulated in a sufficiently general way that they can be adopted by all health care organizations in one form or another." (Page 168)

The specific requirements and supporting implementation features detailed in the next section represent this general set of practices. Many health care entities have already implemented some or all of these practices. We believe they represent those practices that are necessary in order to conduct business electronically in the health care industry today and, therefore, are normal business costs.

Inherent in this approach is a balance between the need to secure health data against risk and the economic cost of doing so. Health care entities must consider both aspects in devising their security solutions.

Specific Requirements

The proposed standard requires that each health care entity engaged in electronic maintenance or transmission of health information assess potential risks and vulnerabilities to the individual health data in its possession in electronic form, and develop, implement, and maintain appropriate security measures. Most importantly, these measures must be documented and kept current.

The proposed security standard consists of the requirements that a health care entity must address in order to safeguard the integrity, confidentiality, and availability of its electronic data. It also describes the implementation features that must be present in order to satisfy each requirement. The proposed requirements and implementation features were developed by the implementation team based on knowledge of security procedures and existing standards and guidelines described above. This was an iterative process that involved extensive outreach with a number of health care industry and Department of Commerce security experts. We also drew upon Recommendations 1 and 3 in the National Research Council's 1997 report, *For The Record*, that were recommended for immediate implementation.

"Recommendation 1: All organizations that handle patient-identifiable health care information—regardless of size—should adopt the set of technical and organizational policies, practices, and procedures described below to protect such information."

The proposed security standard addresses the following policies, practices, and procedures that were listed under Recommendation 1:

- Organizational Practices
  1. Security and confidentiality policies
  2. Information security officers
  3. Education and training programs, and
  4. Sanctions
- Technical Practices and Procedures
  1. Individual authentication of users
  2. Access controls
  3. Audit trails
  4. Physical security and disaster recovery
  5. Protection of remote access points
  6. Protection of external electronic communications
  7. Software discipline, and
  8. System assessment

"Recommendation 3: The federal government should work with industry to promote and encourage an informed public debate to determine an appropriate balance between the primary concerns of patients and the information needs of various users of health care information."

This proposed security standard was developed in the spirit of Recommendation 3. The security standard development process has been an open one with invitations to a number of organizations to participate in the security discussions. Although implementation team membership was limited to government employees, nongovernmental organizations; business organizations; individuals knowledgeable in security; and educational institutions have been encouraged to express their views.

As a result of the collaborative security regulation development process, the implementation team has chosen to divide the proposed security requirements, for purposes of presentation only, into the following four categories:

- Administrative procedures to guard data integrity, confidentiality, and availability—these are documented, formal practices to manage the selection and execution of security measures to protect data and the conduct of personnel in relation to the protection of data.
- Physical safeguards to guard data integrity, confidentiality, and availability—these relate to the protection of physical computer systems and related buildings and equipment from fire and other natural and environmental hazards, as well as from intrusion. Physical safeguards also cover the use of locks, keys, and administrative measures used to control access to computer systems and facilities.
- Technical security services to guard data integrity, confidentiality, and availability—these include the processes that are put in place to protect and to control and monitor information access, and
- Technical security mechanisms—these include the processes that are put in place to prevent unauthorized access to data that is transmitted over a communications network.

It should be noted that the only necessity is that the requirements would be met, not that they be presented in these four categories. Under this proposed rule, a business entity could choose to order the requirements in any manner that suits its business.

We then determined the requirements and implementation features that health plans, providers, and clearinghouses would implement. The implementation features describe the requirements in greater detail. Some requirements do not require this additional level of detail. Within the four categories, the requirements and implementation features are presented in alphabetical order to ensure that no one item is considered to be more important than another. The relative importance of the requirements and implementation features would depend on the characteristics of each organization.

The four categories of the matrix are described in greater detail in § 142.308 and are depicted in tabular form along with the electronic signature standard in

a combined matrix located at Addendum 1. We have not included the matrix in the proposed regulation text. We invite your comments concerning the appropriateness and usefulness of including the matrix in the final regulation text. We also solicit comments as to the level of detail expressed in requirement implementation features; i.e., do any represent a level of detail that goes beyond what is necessary or appropriate. We have also provided a glossary of terms to facilitate a common understanding of the matrix entries. The glossary can be found at Addendum 2. Finally, we have included currently existing standards and guidelines mapped to the proposed security standard. This mapping is not all inclusive and is located at Addendum 3.

1. Administrative Procedures

[Please label written comments or e-mailed comments about this section with the subject: administrative procedures]

In this proposed rule, the administrative requirements and supporting implementation features are presented at § 142.308(a). We would require each to be documented. We would require the documentation to be made available to those individuals responsible for implementing the procedures and would require it to be reviewed and updated periodically. The following matrix depicts the requirements and supporting implementation features for the Administrative Procedures category. Following the matrix is a discussion of each of the requirements under that category.

ADMINISTRATIVE PROCEDURES TO GUARD DATA INTEGRITY, CONFIDENTIALITY, AND AVAILABILITY

Requirement	Implementation
Certification	
Chain of trust partner agreement	
Contingency plan (all listed implementation features must be implemented).	Applications and data criticality analysis.
	Data backup plan.
	Disaster recovery plan.
	Emergency mode operation plan.
	Testing and revision.
Formal mechanism for processing records	
Information access control (all listed implementation features must be implemented).	Access authorization.
	Access establishment.
	Access modification.
Internal audit	
Personnel security (all listed implementation features must be implemented).	Assure supervision of maintenance personnel by authorized, knowledgeable person.
	Maintenance of record of access authorizations.
	Operating, and in some cases, maintenance personnel have proper access authorization.
	Personnel clearance procedure.
	Personnel security policy/procedure.
	System users, including maintenance personnel, trained in security.
Security configuration mgmt. (all listed implementation features must be implemented).	Documentation.
	Hardware/software installation & maintenance review and testing for security features.
	Inventory.
	Security Testing.
	Virus checking.
Security incident procedures (all listed implementation features must be implemented).	Report procedures.
	Response procedures.
Security management process (all listed implementation features must be implemented).	Risk analysis.
	Risk management.
	Sanction policy.
	Security policy.
Termination procedures (all listed implementation features must be implemented).	Combination locks changed.
	Removal from access lists.
	Removal of user account(s).
	Turn in keys, token or cards that allow access.
Training (all listed implementation features must be implemented)	Awareness training for all personnel (including mgmt)
	Periodic security reminders.
	User education concerning virus protection.
	User education in importance of monitoring log in success/failure, and how to report discrepancies.
	User education in password management

a. *Certification.* Each organization would be required to evaluate its computer system(s) or network design(s) to certify that the appropriate security has been implemented. This evaluation could be performed internally or by an external accrediting agency.

We are, at this time, soliciting input on appropriate mechanisms to permit independent assessment of compliance. We would be particularly interested in input from those engaging in health care electronic data interchange (EDI), as well as independent certification and auditing organizations addressing issues of documentary evidence of steps taken for compliance; need for, or desirability of, independent verification, validation, and testing of system changes; and certifications required for off-the-shelf products used to meet the requirements of this regulation.

We also solicit comments on the extent to which obtaining external certification would create an undue burden on small or rural providers.

b. *Chain of Trust Partner Agreement.* If data are processed through a third party, the parties would be required to enter into a chain of trust partner agreement. This is a contract in which the parties agree to electronically exchange data and to protect the transmitted data. The sender and receiver are required and depend upon each other to maintain the integrity and confidentiality of the transmitted information. Multiple two-party contracts may be involved in moving information from the originating party to the ultimate receiving party. For example, a provider may contract with a clearinghouse to transmit claims to the clearinghouse; the clearinghouse, in turn, may contract with another clearinghouse or with a payer for the further transmittal of those claims. These agreements are important so that the same level of security will be maintained at all links in the chain when information moves from one organization to another.

c. *Contingency Plan.* We would require a contingency plan to be in effect for responding to system emergencies. The organization would be required to perform periodic backups of data, have available critical facilities for continuing operations in the event of an emergency, and have disaster recovery procedures in place. To satisfy the requirement, the plan would include the following:

- Applications and data criticality analysis,
- A data backup plan,
- A disaster recovery plan,
- An emergency mode operation plan, and
- Testing and revision procedures.

d. *Formal Mechanism for Processing Records* There would be a formal mechanism for processing records, that is, documented policies and procedures for the routine and nonroutine receipt, manipulation, storage, dissemination, transmission, and/or disposal of health information. This is important to limit the inadvertent loss or disclosure of secure information because of process issues.

e. *Information Access Control.* An entity would be required to establish and maintain formal, documented policies and procedures for granting different levels of access to health care information. To satisfy this requirement, the following features would be provided:

- Access authorization policies and procedures.
- Access establishment policies and procedures.
- Access modification policies and procedures.

Access control is also discussed later in this document in the personnel security requirement and under the physical safeguards, technical security services, and technical security mechanisms categories.

f. *Internal Audit.* There would be a requirement for an ongoing internal audit process, which is the in-house review of the records of system activity (for example, logins, file accesses, security incidents) maintained by an entity. This is important to enable the organization to identify potential security violations.

g. *Personnel Security.* There would be a requirement that all personnel with access to health information must be authorized to do so after receiving appropriate clearances. This is important to prevent unnecessary or inadvertent access to secure information. The personnel security requirement would require entities to meet the following conditions:

- Assure supervision of personnel performing technical systems maintenance activities by authorized, knowledgeable persons.
- Maintain access authorization records.
- Insure that operating, and in some cases, maintenance personnel have proper access.
- Employ personnel clearance procedures
- Employ personnel security policy/ procedures.
- Ensure that system users, including technical maintenance personnel are trained in system security.

h. *Security Configuration Management.* The organization would be required to implement measures, practices, and procedures for the security of information systems. These would be coordinated and integrated with other system configuration management practices in order to create and manage system integrity. This integration process is important to ensure that routine changes to system hardware and/or software do not contribute to or create security weaknesses. This requirement would include the following:

- Documentation.
- Hardware/software installation and maintenance review and testing for security features.
- Inventory procedures.
- Security testing.
- Virus checking.

i. *Security Incident Procedures.* There would be a requirement to implement accurate and current security incident procedures. These are formal, documented instructions for reporting security breaches, so that security violations are reported and handled promptly. These instructions would include the following:

- Report procedures.
- Response procedures.

j. *Security Management Process.* A process for security management would be required. This involves creating, administering, and overseeing policies to ensure the prevention, detection, containment, and correction of security breaches. We would require the organization to have a formal security management process in place to address the full range of security issues. Security management includes the following mandatory implementation features:

- Risk analysis.
- Risk management.
- A sanction policy.
- A security policy.

k. *Termination Procedures.* There would be a requirement to implement termination procedures, which are formal, documented instructions, including appropriate security measures, for the ending of an employee's employment or an internal/ external user's access. These procedures are important to prevent the possibility of unauthorized access to secure data by those who are no longer authorized to access the data. Termination procedures would include the following mandatory implementation features:

- Changing combination locks.
- Removal from access lists.
- Removal of user account(s).
- Turn in of keys, tokens, or cards that allow access.

1. *Training.* This proposed rule would require security training for all staff regarding the vulnerabilities of the health information in an entity's possession and procedures which must be followed to ensure the protection of that information. This is important because employees need to understand their security responsibilities and make security a part of their day-to-day activities. The implementation features that would be required to be incorporated follow:

- Awareness training for all personnel, including management, (this is also included as a requirement under physical safeguards).
- Periodic security reminders.
- User education concerning virus protection.
- User education in importance of monitoring login success/failure, and how to report discrepancies.
- User education in password management.

2. Physical Safeguards To Guard Data Integrity, Confidentiality, and Availability

[Please label written comments or e-mailed comments about this section with the subject: Physical Safeguards]

The requirements and implementation features for physical safeguards are presented at § 142.308(b) of this proposed rule. We would require each of these safeguards to be documented. We would require this documentation to be made available to those individuals responsible for implementing the safeguards and to be reviewed and updated periodically. The following matrix depicts the requirements and implementation features for the Physical Safeguards category. Following the matrix is a discussion of each of the requirements under that category.

PHYSICAL SAFEGUARDS TO GUARD DATA INTEGRITY, CONFIDENTIALITY, AND AVAILABILITY

Requirement	Implementation
Assigned security responsibility	
Media controls (all listed implementation features must be implemented).	Access control. Accountability (tracking mechanism). Data backup. Data storage. Disposal.
Physical access controls (limited access) (all listed implementation features must be implemented).	Disaster recovery. Emergency mode operation. Equipment control (into and out of site). Facility security plan. Procedures for verifying access authorizations prior to physical access. Maintenance records. Need-to-know procedures for personnel access. Sign-in for visitors and escort, if appropriate. Testing and revision.
Policy/guideline on work station use	
Secure work station location	
Security awareness training.	

a. *Assigned Security Responsibility.* We would require the security responsibility to be assigned to a specific individual or organization, and the assignment be documented. These responsibilities would include the management and supervision of (1) the use of security measures to protect data, and (2) the conduct of personnel in relation to the protection of data. This assignment is important to provide an organizational focus and importance to security and to pinpoint responsibility.

b. *Media Controls.* Media controls would be required in the form of formal, documented policies and procedures that govern the receipt and removal of hardware/software (for example, diskettes, tapes) into and out of a facility. They are important to ensure total control of media containing health information. These controls would include the following mandatory implementation features:

- Controlled access to media.
- Accountability (tracking mechanism).
- Data backup.
- Data storage.
- Disposal.

c. *Physical Access Controls.* Physical access controls (limited access) would be required. These would be formal, documented policies and procedures for limiting physical access to an entity while ensuring that properly authorized access is allowed. These controls would be extremely important to the security of health information by preventing unauthorized physical access to information and ensuring that authorized personnel have proper access. These controls would include the following mandatory implementation features:

- Disaster recovery.
- Emergency mode operation.
- Equipment control (into and out of site).
- A facility security plan.
- Procedures for verifying access authorizations prior to physical access.
- Maintenance records.
- Need-to-know procedures for personnel access.
- Sign-in for visitors and escort, if appropriate.
- Testing and revision.

d. *Policy/Guideline on Workstation Use.* Each organization would be required to have a policy/guideline on workstation use. These documented instructions/procedures would delineate the proper functions to be performed and the manner in which those functions are to be performed (for example, logging off before leaving a terminal unattended). This would be important so that employees will understand the manner in which workstations must be used to maximize the security of health information.

e. *Secure Workstation Location.* Each organization would be required to put in place physical safeguards to eliminate or minimize the possibility of unauthorized access to information. This would be important especially in public buildings, provider locations, and in areas where there is heavy pedestrian traffic.

f. *Security Awareness Training.* Security awareness training would be required for all employees, agents, and contractors. This would be important because employees would need to understand their security responsibilities based on their job responsibilities in the organization and make security a part of their daily activities.

3. Technical Security Services To Guard Data Integrity, Confidentiality, and Availability

[Please label written comments or e-mailed comments about this section with the subject: Technical Security Services]

The proposed requirements and implementation features for technical security services are presented at § 142.308(c). We would require each of these services to be implemented and documented. The documentation would be made available to those individuals responsible for implementing the services and would be reviewed and updated periodically. The following matrix depicts the requirements and implementation features for the Technical Security Services category. Following the matrix is a discussion of

each of the requirements under that category.

TECHNICAL SECURITY SERVICES TO GUARD DATA INTEGRITY, CONFIDENTIALITY, AND AVAILABILITY

Requirement	Implementation
Access control (The following implementation feature must be implemented: Procedure for emergency access. In addition, at least one of the following three implementation features must be implemented: Context-based access, Role-based access, User-based access. The use of Encryption is optional).	Context-based access. Encryption. Procedure for emergency access. Role-based access. User-based access.
Audit controls	
Authorization control (At least one of the listed implementation features must be implemented).	Role-based access. User-based access.
Data Authentication	
Entity authentication (The following implementation features must be implemented: Automatic logoff, Unique user identification. In addition, at least one of the other listed implementation features must be implemented).	Automatic logoff. Biometric. Password. PIN. Telephone callback. Token. Unique user identification.

a. *Access Control.* There would be a requirement for access control which would restrict access to resources and allow access only by privileged entities. It would be important to limit access to health information to those employees who have a business need to access it. Types of access control include, among others, mandatory access control, discretionary access control, time-of-day, classification, and subject-object separation. The following implementation feature would be used:

- Procedure for emergency access.

In addition, at least one of the following three implementation features would be used:

- Context-based access.
- Role-based access.
- User-based access.

The use of the encryption implementation feature would be optional.

b. *Audit Controls.* Each organization would be required to put in place audit control mechanisms to record and examine system activity. They would be important so that the organization can identify suspect data access activities, assess its security program, and respond to potential weaknesses.

c. *Authorization Control.* There would be a requirement to put in place a mechanism for obtaining consent for the use and disclosure of health information. These controls would be necessary to ensure that health information is used only by properly authorized individuals. Either of the following implementation features may be used:

- Role-based access.
- User-based access (see access control, above.).

d. *Data Authentication.* Each organization would be required to be able to provide corroboration that data in its possession has not been altered or destroyed in an unauthorized manner. Examples of how data corroboration may be assured include the use of a check sum, double keying, a message authentication code, or digital signature.

e. *Entity Authentication.* Each organization would be required to implement entity authentication, which is the corroboration that an entity is who it claims to be. Authentication would be important to prevent the improper identification of an entity who is accessing secure data. The following implementation features would be used:

- Automatic log off.
- Unique user identification.

In addition, at least one of the following implementation features would be used:

- A biometric identification system.
- A password system.
- A personal identification number (PIN).
- Telephone callback.
- A token system which uses a physical device for user identification.

4. Technical Security Mechanisms To Guard Against Unauthorized Access to Data That Is Transmitted Over a Communications Network

[Please label written comments or e-mailed comments about this section with the subject: Technical Security Mechanisms]

In this proposed rule, the requirements and implementation features for technical security mechanisms are presented at § 142.308(d). Each of these mechanisms would need to be documented. The documentation would be made available to those individuals responsible for implementing the mechanisms and would be reviewed and updated periodically. The following matrix depicts the requirement and implementation features for the Technical Security Mechanisms category. Following the matrix is a discussion of the requirement under that category.

TECHNICAL SECURITY MECHANISMS TO GUARD AGAINST UNAUTHORIZED ACCESS TO DATA THAT IS TRANSMITTED OVER A COMMUNICATIONS NETWORK

Requirement	Implementation
Communications/network controls (If communications or networking is employed, the following implementation features must be implemented: Integrity controls, Message authentication. In addition, one of the following implementation features must be implemented: Access controls, Encryption. In addition, if using a network, the following four implementation features must be implemented: Alarm, Audit trail, Entity authentication, Event reporting).	Access controls. Alarm. Audit trail. Encryption. Entity authentication. Event reporting. Integrity controls. Message authentication.

Each organization that uses communications or networks would be required to protect communications containing health information that are transmitted electronically over open networks so that they cannot be easily intercepted and interpreted by parties other than the intended recipient, and to protect their information systems from intruders trying to access systems through external communication points. When using open networks, some form of encryption should be employed. The utilization of less open systems/networks such as those provided by a value-added network (VAN) or private-wire arrangement provides sufficient access controls to allow encryption to be an optional feature. These controls would be important because of the potential for compromise of information over open systems such as the Internet or dial-in lines.

The following implementation features would be in place:

- Integrity controls.
- Message authentication.

One of the following implementation features would be in place:

- Access controls.
- Encryption.

In addition, if using a network for communications, the following implementation features would be in place:

- Alarm.
- Audit trail.
- Entity authentication.
- Event reporting.

Small or Rural Provider Example. The size and organizational structure of the entities that would be required to implement this standard vary tremendously. Therefore, it would be impossible to provide examples that would cover every possible implementation of security in the health care industry. Nevertheless, we have included an example describing the manner in which a small or rural provider might choose to implement the requirements of the standard. (For purposes of this example, we would describe a small or rural provider as a one to four physician office, with two to five additional employees. The office uses a PC-based practice management system, which is used to communicate intermittently with a clearinghouse for submission of electronic claims. The number of providers is of less importance for this example than the relatively simple technology in use and the fact that there is insufficient volume or revenue to justify employment of a computer system administrator.) We want to emphasize that there are numerous ways in which an entity could implement these requirements and features. This example does not necessarily represent the best way or the only way in which an entity could choose to implement security.

We anticipate that the small or rural provider office, as described above, would normally evaluate and self-certify that the appropriate security is in place for its computer system and office procedures. This evaluation could be done by a knowledgeable person on the staff, or more likely, by a consultant or by the vendor of the practice management system as a service to its customers. First, the office might assess actual and potential risks to its information assets. Then, to establish appropriate security, the office would develop policies and procedures to mitigate and manage those risks. These would include an overall framework outlining information security activities and responsibilities, and repercussions for failure to meet those responsibilities.

Next, this office might develop contingency plans to reduce or negate the damage resulting from processing anomalies; for example, establish a routine process for maintaining back up floppy disks at a second location, obtain a PC maintenance contract, and arrange for use of a backup PC should the need arise. This office would need to periodically review its plan to determine whether it still met the office's needs.

The office would need to create and document a personnel security policy and procedures to be followed. A key individual on the office staff should be charged with the responsibility for assuring the Personnel Security requirement is met. This responsibility would include seeing that the access authorization levels granted are documented and kept current (for example, records are kept of everyone who is permitted to use the PC and what files they may access), and training all personnel in security. Again, we emphasize that these requirements are scalable. The requirement for Personnel Clearance Procedures could be met in a small office with standard personal and professional reference checks, while a large organization may employ more formal, rigorous background investigations.

This same individual could also be charged with the responsibility for Security Configuration Management and Termination Procedures. For our small provider, the Security Configuration Management requirement would be relatively easy to satisfy; the necessary features could be part of a purchased hardware/software package (for example, a new PC might be equipped with virus checking software), or included as part of the support supplied with the purchase of equipment and software. Termination procedures would incorporate specific security actions to be taken as a result of an employee's termination, such as obtaining all keys and changing combinations or passwords. A "position description" document describing this person's duties could specify the level of detail necessary.

The small or rural provider office would also need to ensure that they have activated the internal auditing capability of the software used to manage health data files so that it tracks who has accessed the data. (We expect that the capability of keeping audit trails will become standard in all health care software in the near future, spurred on by the health information privacy debates in the Congress and elsewhere.)

A small or rural provider may document compliance with many of the

foregoing administrative security requirements by including them in an "office procedures" type of document that should be required reading by new employees and always available for reference. Requirements that would lend themselves to inclusion in an "office procedures" document include: contingency plans, formal records processing procedures, information access controls (rules for granting access, actual establishment of access, and procedures for modifying such access), security incident procedures (for example, who is to be notified if it appears that medical information has been accessed by an unauthorized party), and training. Periodic security reminders could include visual aids, such as posters and screen savers, and oral reminders in recurring meetings.

Physical Access controls would be relatively straightforward for this small or rural office, using locked rooms and/or closets to secure equipment and media from unauthorized access. The "office procedures/policies" manual should include directions for authorizing access and keeping records of authorized accesses. Media Controls and Workstation Use policy instructions would be developed by the office and would include additional instructions on such items as where to store backed-up data, how to dispose of data no longer needed, or logging off when leaving terminals unattended.

Safeguards for the security of workstation location(s) would depend upon the physical surroundings in the small or rural office. Our small or rural provider may meet the requirements by locating equipment in areas that are generally populated by office staff and have some degree of physical separation from the public. Security Awareness Training would be part of the new employee orientation process and would be a periodic recurring discussion item in staff meetings.

The Technical Security Services requirements for Access Control, Entity Authentication, and Authorization Control may be achieved simply by implementing a user-based data access model (assigning a user-name and password combination to each authorized employee). Other access models could be employed if desired, but would prove unwieldy for the small office. For example, the role-based access process groups users with similar data access needs, and context-based access is based upon the context of a transaction—not on the attributes of the initiator. By assigning full access rights to a minimum of two key individuals in the office, implementation of the Emergency Access feature could be satisfied. Audit control mechanisms, by necessity, would be provided by software featuring that capability. By establishing and using a message authentication code, Data Authentication would be achieved. Use of the password system mentioned above could also satisfy the Unique User Identification requirement.

As our example provider contracts with a third party to handle claims processing, the claims processing contract would be the vehicle to provide for a chain of trust (requiring the contractor to implement the same security requirements and take responsibility for protecting the data it receives).

If this provider chooses to use the Internet to transmit or receive health information, some form of encryption must be used. For example, the provider could procure and use commercial software to provide protection against unauthorized access to the data transmitted or received. (This decision must take into account what encryption system the message recipient uses.) On the other hand, health information when transmitted via other means such as VANs, private wires, or even dial-up connections may not require such absolute protection as is provided by encryption. This small or rural provider would likely not be part of a network configuration, therefore, only integrity controls and message authentication would be required and could be provided by currently available software products, most likely provided as part of their contract with their health care clearinghouse.

Small providers may need guidance regarding the content of the documents required by this rule (for example, specifics of a chain of trust partner agreement). We would expect models of the documentation discussed in this example to be developed by industry associations and vendors. If this model documentation is not developed, DHHS would work with the industry to develop them.

E. Electronic Signature Standard

[Please label written comments or e-mailed comments about this section with the subject: Electronic Signature Standard]

HIPAA directs the Secretary of the Department of Health and Human Services to coordinate with the Secretary of the Department of Commerce in adopting standards for the electronic transmission and authentication of signatures with respect to the transactions referred to in the law. This rule was developed in coordination with the Department of Commerce's National Institute of Standards and Technology. We propose to adopt a cryptographically based digital signature as the standard.

Whenever a HIPAA specified transaction requires the use of an electronic signature, the standard must be used. It should be noted that an electronic signature is not required for any of the currently proposed standard transactions.

In the electronic environment, the same legal weight associated with an original signature on a paper document may be needed for electronic data. Use of an electronic signature refers to the act of attaching a signature by electronic means. The electronic signature process involves authentication of the signer's identity, a signature process according to system design and software instructions, binding of the signature to the document and non-alterability after the signature has been affixed to the document. The generation of electronic signatures requires the successful identification and authentication of the signer at the time of the signature.

The proposed standard for electronic signature is presented at § 142.310 and would be digital.

The following matrix depicts the requirement and implementation features for electronic signatures. Following the matrix is a discussion of the electronic signature requirement.

ELECTRONIC SIGNATURE

Requirement	Implementation
Digital signature (If digital signature is employed, the following three implementation features must be implemented: Message integrity, Nonrepudiation, User authentication. Other implementation features are optional).	Ability to add attributes. Continuity of signature capability. Countersignatures. Independent verifiability. Interoperability. Message integrity. Multiple Signatures. Nonrepudiation. Transportability. User authentication.

Various technologies may fulfill one or more of the requirements specified in the matrix. Authentication systems (passwords, biometrics, physical feature authentication, behavioral actions and token-based authentication) can be combined with cryptographic techniques to form an electronic signature. However, a complete electronic signature system may require more than one of the technologies mentioned above. If electronic signatures would be used, certain implementation features must be included, specifically:

- Message integrity.
- Nonrepudiation.
- User authentication.

Currently there are no technically mature techniques that provide the security service of nonrepudiation in an open network environment, in the absence of trusted third parties, other than digital signature-based techniques. Therefore, if electronic signatures are employed, we would require that digital signature technology be used. A digital signature is formed by applying a mathematical function to the electronic document. This process yields a unique bit string, referred to as a message digest. The digest (only) is encrypted using the originator's private key and the resulting bit stream is appended to the electronic document. The recipient of the transmitted document decrypts the message digest with the originator's public key, applies the same message hash function to the document, then compares the resulting digest with the transmitted version. If they are identical, then the recipient is assured that the message is unaltered and the identity of the signer is proven. Since only the signatory authority can hold the Private Key used to digitally sign the document, the critical feature of nonrepudiation is enforced. Other electronic signature implementation features that may be used follow:

- Ability to add attributes.
- Continuity of signature capability.
- Countersignatures capability.
- Independent verifiability.
- Interoperability.
- Multiple signatures.
- Transportability.

This standard is described in greater detail in § 142.310 of the regulation text and is depicted in tabular form along with the security standard in a combined matrix located at Addendum 1. We have not included the matrix in the proposed regulation text. We invite your comments concerning the appropriateness and usefulness of including the matrix in the final regulation text. We have also provided a glossary of terms to facilitate a common understanding of the matrix entries. The glossary can be found at Addendum 2. Finally, we have included currently existing standards and guidelines mapped to the proposed electronic signature standard. This mapping is not all inclusive and is located at Addendum 3.

F. Selection Criteria

Each individual implementation team weighted the criteria described in section I.B. above, Process for Developing National Standards, in terms of the standard it was addressing. As we assessed security and electronic signatures, it became apparent that while the security standard set forth in § 142.308 and the electronic signature standard set forth in § 142.310 satisfy all the criteria described above, they most strongly address criteria 1, 3, 7, 9, and 10. These criteria are described below in the specific context of these standards.

1. Improve the efficiency and effectiveness of the health care system.

The security and electronic signature standards would be integrated with the electronic transmission of health care information to improve the overall effectiveness of the health care system. This integration would assure that electronic health care information would not be accessible to any unauthorized person or organization, but would be both accurate and available to those who are authorized to receive it.

3. Be consistent and uniform with the other HIPAA standards and, secondly, with other private and public sector health data standards.

The security and electronic signature standards were developed after a comprehensive review of existing standards and guidelines, with significant input by a wide range of industry experts. As indicated in Addendum 3, the standards map well to existing standards and guidelines.

7. Be technologically independent of computer platforms and transmission protocols.

We have defined the security and electronic signature standards in terms of requirements that would allow businesses in the health care industry to select the technology that best meets their business requirements while still allowing them to comply with the standards.

9. Keep data collection and paperwork burdens on users as low as is feasible.

The security and electronic signature standards would allow individual health care industry businesses to ascertain the level of security information that would be needed. The confidentiality level associated with individual data elements concerning health care information would determine the appropriate security application to be used. The security standard would define the requirements to be met to achieve the privacy and confidentiality goal, but each business entity, driven by its business requirements, would decide what techniques and controls would provide appropriate and adequate electronic data protection. This would allow data collection and the paperwork burden to be as low as is feasible.

10. Incorporate flexibility to adapt more easily to changes in the health care infrastructure and information technology.

A technologically neutral security standard would be more adaptable to changes in infrastructure and information technology.

G. Consultations

In the development of the security and electronic signature standards, we consulted with many organizations, including those the legislation requires (section 1172(c)(3)(B) of the Act):

1. The NCVHS held two days of public hearings on security issues in August 1997, and made a recommendation to the Secretary of HHS, as required by the legislation. The NCVHS recommendation to the Secretary of HHS, as required by the legislation, was for a technologically neutral standard. It identified certain criteria to be established for a health information system to be secure. The proposed security standard complies with the NCVHS security recommendation.

2. The ANSI Accredited Standards Committee (ASC) X12 subcommittees on communication and control, insurance and government were contacted. Their current standards development effort is focused on messaging rather than on security requirements.

3. American Society for Testing and Materials (ASTM), Committee E31 on Computerized Systems participated in the security discussions.

4. Association for Electronic Health Care Transactions (AFEHCT), the clearinghouse organization, provided information on its health care transaction process requirements and emphasized that the security standard must be adaptable to different business needs.

5. Computer-based Patient Record Institute (CPRI) was consulted because the Work Group on Confidentiality, Privacy and Security is working on the establishment of guidelines, confidentiality agreements, security requirements, and frameworks. CPRI works closely with accredited standards development organizations.

6. Health Level Seven (HL–7) has been contacted through its participation at the HISB meetings.

7. NUCC and the NUBC were apprised of the different implementation teams' efforts. NUBC has not addressed security issues at any of the public meetings. NUCC identified a number of issues at its November 18–19 meeting and provided written comments to us.

H. Rules for Security Standards and Electronic Signature Standard

1. Health Plans

a. In § 142.306(a), we would require health plans to accept and apply the security standard to all health care information pertaining to an individual that is electronically maintained or electronically transmitted. Federal agencies and States may place additional requirements on their health plans. In addition, trading partners may mutually agree to implement additional security measures.

b. In § 142.310(a), entities would not be required to use an electronic signature. However, if a plan elects to use an electronic signature in one of the transactions named in the law, it would be required to apply the electronic signature standard described in § 142.310(b) to that transaction. In the future, we anticipate that the standards for other transactions may include requirements for signatures. In particular, the proposed standard for claims attachments, which will be issued in a separate regulations package later, may include signature requirements on some or all of the attachments. If the proposed attachments standard includes such signature requirements, we will address the issue of how to reconcile such requirements with existing State and Federal requirements for written signatures as part of the proposed rule.

2. Health Care Clearinghouses

a. We would require in § 142.306(b) that each health care clearinghouse comply with the security standard to ensure all health care information and activities are protected from unauthorized access. If the clearinghouse is part of a larger organization, then security must be imposed to prevent unauthorized access by the larger organization. The security standards apply to all health information pertaining to an individual that is electronically maintained or electronically transmitted.

b. In § 142.310(a), entities would not be required to use an electronic signature. However, if a plan elects to use an electronic signature in one of the transactions named in the law, it would be required to apply the electronic signature standard described in § 142.310(b) to that transaction. In the future, we anticipate that the standards for other transactions may include requirements for signatures. In particular, the proposed standard for claims attachments, which will be issued in a separate regulations package later, may include signature requirements on some or all of the attachments. If the proposed attachments standard includes such signature requirements, we will address the issue of how to reconcile such requirements with existing State and Federal requirements for written signatures as part of the proposed rule.

3. Health Care Providers

a. In § 142.306(a), we would require each health care provider to apply the security standard to all health information pertaining to an individual that is electronically maintained or electronically transmitted.

b. In § 142.310(a), entities would not be required to use an electronic signature. However, if a plan elects to use an electronic signature in one of the transactions named in the law, it would be required to apply the electronic signature standard described in § 142.310(b) to that transaction. In the future, we anticipate that the standards for other transactions may include requirements for signatures. In particular, the proposed standard for claims attachments, which will be issued in a separate regulations package later, may include signature requirements on some or all of the attachments. If the proposed attachments standard includes such signature requirements, we will address the issue of how to reconcile such requirements with existing State and Federal requirements for written signatures as part of the proposed rule.

I. Effective Dates

Health plans would be required to comply with the security and electronic signature standards as follows:

1. Each health plan that is not a small health plan would have to comply with the requirements of §§ 142.306, 142.308, and 142.310 no later than 24 months after publication of the final rule.

2. Each small health plan would have to comply with the requirements of §§ 142.306, 142.308, and 142.310 no later than 36 months after the date of publication of the final rule.

3. If the effective date for the electronic transaction standards is later than the effective date for the security standard, implementation of the security standard would not be delayed until the standard transactions are in use. The security standard would still be effective with respect to electronically stored or maintained data. Security of health information would not be solely tied to the standard transactions but would apply to all individual health information electronically stored, maintained, or transmitted.

4. Under this proposed rule, in some cases, a health plan could choose to convert from paper to standard EDI transactions prior to the effective date of the security standard. We would recommend that the security standard be implemented at that time in order to safeguard the data in those transactions. We invite comments on this issue.

Failure to comply with standards may result in monetary penalties. The Secretary is required by statute to impose penalties of not more than $100 per violation on any person who fails to comply with a standard, except that the total amount imposed on any one person in each calendar year may not exceed $25,000 for violations of one requirement.

We are not proposing any enforcement procedures at this time, but we plan to do so in a future **Federal Register** document once the industry has some experience with using the standards. These procedures will be in place by the time the standards are implemented by industry. We envision the monitoring and enforcement process as a partnership between the Federal government and the private sector. Some private accreditation bodies have already exhibited interest in certifying compliance with the security requirements as part of their accreditation reviews. Small providers may be able to self-certify through industry-developed checklists. HHS would likely retain the final responsibility for determining violations and imposing the penalties specified by the statute. We welcome comments on this approach.

III. Implementation

If an entity elects to use an electronic signature in a transaction, or if an electronic signature is required by a transaction standard adopted by the Secretary, the entity must apply the electronic signature standard described in § 142.310(b).

How the security standard would be implemented is dependent upon industry trading partner agreements for electronic transmissions. The health care industry would be able to adapt the security matrix to meet its business needs. We propose that the requirements of the security standard be implemented over time. However, we would require implementation to be complete by the applicable effective date. We would encourage, but not require that entities comply with the security standard as soon as practicable, preferably before implementing the transactions standards.

The security standard would supersede contrary provisions of State law including State law requiring medical or health plan records to be maintained or transmitted in other electronic formats. There are certain exceptions when the standards would not supersede contrary provisions of State law; section 1178 identifies those conditions and directs the Secretary to determine whether a particular State provision falls within one or more of the exceptions.

The electronic signature standard (digital signature) would be deemed to satisfy Federal and State statutory requirements for written signatures with respect to the named transactions referred to in the legislation.

Several accreditation organizations such as the Electronic Healthcare Network Accreditation Commission (EHNAC), the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), and the National Committee for Quality Assurance (NCQA), indicate that one of their accreditation requirements will be compliance with the HIPAA security and electronic signature (if applicable) standards.

IV. New and Revised Standards

To encourage innovation and promote development, we plan to establish a process to allow an organization to request a revision or replacement to any adopted standard or standards. An organization could request a revision or replacement to an adopted standard by requesting a waiver from the Secretary of Health and Human Services to test a revised or new standard. The organization would be required, at a minimum, to demonstrate that the revised or new standard offers a clear improvement over the adopted standard. If the organization presents sufficient documentation that supports testing of a revised or new standard, we want to be able to grant the organization a temporary waiver to test while remaining in compliance with the law. We do not intend to establish a process that would allow an organization to avoid using any adopted standard.

We would welcome comments on the following: (1) How we should establish this process, (2) the length of time a proposed standard should be tested before we decide whether to adopt it, (3) whether we should solicit public comments before implementing a change in a standard, and (4) other issues and recommendations we should consider. Comments should be submitted to the addresses presented in the **ADDRESSES** section of this document.

The following is one possible process:

- Any organization that wishes to revise or replace an adopted standard would submit its waiver request to an HHS evaluation committee (to be established or defined). The organization would do the following for each standard it wishes to revise or replace:

  + Provide a detailed explanation, no more than 10 pages, of how the revision or replacement would be a clear improvement over the current standard.

  + Provide specifications and technical capabilities on the revised or new standard, including any additional system requirements.

  + Provide an explanation, no more than five pages, of how the organization intends to test the standard.

- The committee's evaluation would, at a minimum, be based on the following:

  + A cost-benefit analysis.

  + An assessment of whether the proposed revision or replacement demonstrates a clear improvement to an existing standard.

  + The extent and length of time of the waiver.

- The evaluation committee would inform the organization requesting the waiver within 30 working days of the committee's decision on the waiver request. If the committee decides to grant a waiver, the notification may include the following:

  + Committee comments such as the following:

—The length of time for which the waiver applies if it differs from the waiver request.

—The sites the committee believes are appropriate for testing if they differ from the waiver request.

—Any pertinent information regarding the conditions of an approved waiver.

- Any organization that receives a waiver would be required to submit a report containing the results of the study, no later than 3 months after the study is completed.

- The committee would evaluate the report and determine whether the benefits of the proposed revision or new standard significantly outweigh the disadvantages of implementing it and make a recommendation to the Secretary.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble of that document.

VI. Impact Analysis

As the effect of any one standard is affected by the implementation of other standards, it can be misleading to discuss the impact of one standard by itself. Therefore, we did an impact

analysis on the total effect of all the standards in the proposed rule concerning the national provider identifier (HCFA–0045–P), which was published on May 7, 1998 (63 FR 25320).

We intend to publish in each proposed rule an impact analysis that is specific to the standard or standards proposed in that rule, but the impact analysis will assess only the relative cost impact of implementing a given standard. Thus, the following discussion contains the impact analysis for the security standard and the electronic signature standard proposed in this rule. As stated in the general impact analysis in HCFA–0045–P, we do not intend to associate costs and savings to specific standards.

Although we cannot determine the specific economic impact of the standards being proposed in this rule (and individually each standard may not have a significant impact), the overall impact analysis makes clear that, collectively, all the standards will have a significant impact of over $100 million on the economy. Also, while each standard may not have a significant impact on a substantial number of small entities, the combined effects of all the proposed standards may have a significant effect on a substantial number of small entities. Therefore, the following impact analysis should be read in conjunction with the overall impact analysis.

The following describes the specific impacts that relate to the security and electronic signature standards. Security protection for health care information is not a "stand-alone" type requirement. Appropriate security protections will be a business enabler, encouraging the growth and use of electronic data interchange. The synergistic effect of the employment of the recommended security practices, procedures and technologies will enhance all aspects of HIPAA's Administrative Simplification requirements. In addition, it is important to recognize that security is not a product, but is an on-going, dynamic process.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

A. Security Standard

HIPAA requires that all health plans, health care providers, and health care clearinghouses that maintain or transmit health information electronically establish and maintain reasonable and appropriate administrative, technical, and physical safeguards to ensure integrity, confidentiality, and availability of the information. The safeguards also protect the information against any reasonably anticipated threats or hazards to the security or integrity of the information and protect it against unauthorized use or disclosure. Recommendation 1 from the National Research Council's (NRC) report *For the Record: Protecting Electronic Health Information* ("All organizations that handle patient-identifiable health care information—regardless of size—should adopt the set of technical and organization policies, practices, and procedures described * * * to protect such information.") would apply to all health care providers regardless of size, health care clearinghouses, and health plans. We agree with the NRC's belief that implementation of the practices and technologies delineated in Recommendation 1 would be possible today, and at a reasonable cost.

Health care providers that conduct electronic transactions with health plans would have to comply with the recommendation(s) for security protection. There is, however, no requirement to maintain health records electronically or transmit health care information by electronic means. There may also be health care providers that currently submit health care information on paper but archive records electronically. These entities will need to ensure that their existing electronic systems conform to security requirements for maintaining health information. Once they have done so, however, they may also take advantage of all the other benefits of electronic recordkeeping and transmittal. Therefore, no individual small entity is expected to experience direct costs that exceed benefits as a result of this rule. Furthermore, because almost all of the NRC recommendations reflect contemporary security measures and controls, most organizations that currently have security measures should have to make few, if any, modifications to their systems to meet the requirements proposed in the security standard.

The singular exception to the above lies in the area of providing security for the electronic transmission of health care information over insecure, public media. Here, the choice of a method to use is driven by economic factors. If an organization wishes to use an insecure transmission media such as the Internet, and take advantage of the low costs involved, off-setting costs may need to be incurred to provide for an acceptable form of encryption so that health information will be protected from intercept and possible misuse.

One alternative course of action to encrypting the information would be to use the services of a VAN. VANs do not manipulate data, but rather transmit data in its native form over telecommunication lines. We anticipate that VANs would be positively affected by administrative simplification, because use of the proposed transactions standards would eliminate the need for data to be reformatted. This would allow providers to purchase the services of a VAN directly, rather than as a service bundled with the functions of other clearinghouses. Another course of action might be to use private lines which would provide an appropriate level of protection for data in transmission.

B. Electronic Signature Standard

HIPAA does not require the use of electronic signatures. This particular capability, however, would be necessary for a completely paperless environment. Certain features of the digital signature type of electronic signature make this particular system the most desirable. Only digital signatures, using current technology, provide the combination of authenticity, message integrity, and nonrepudiation which is viewed as a desirable complement to the security standards required by the law.

The use of digital signatures requires a certain infrastructure (Public Key Infrastructure) that may necessitate the expenditure of initial and recurring costs for users. We do not know what these costs are presently, due to the lack of maturity of digital signature technology, and minimal use in the marketplace today. It is noted that public key certificate management systems and services do exist today, and it is presumed more quantifiable information will be forthcoming, as to potential costs and savings that can be associated with the use of digital signature systems. Other forms of electronic signature were considered, such as biometric and digitized signatures. While they provide a useful capability in certain circumstances, we believe that digital signature technology is most appropriate for this particular application.

C. Guiding Principles for Standard Selection

The implementation teams charged with designating standards under the statute have defined, with significant input from the health care industry, a set of common criteria for evaluating potential standards. These criteria are based on direct specifications in the HIPAA, the purpose of the law, and principles that support the regulatory

philosophy set forth in EO 12866 of September 30, 1993. In order to be designated as a standard, EO 12866 requires that a proposed standard:

- Improve the efficiency and effectiveness of the health care system by leading to cost reductions for or improvements in benefits from electronic HIPAA health care transactions. This principle supports the regulatory goals of cost-effectiveness and avoidance of burden.
- Meet the needs of the health data standards user community, particularly health care providers, health plans, and health care clearinghouses. This principle supports the regulatory goal of cost-effectiveness.
- Be consistent and uniform with the other HIPAA standards (that is, their data element definitions and codes and their privacy and security requirements) and, secondarily, with other private and public sector health data standards. This principle supports the regulatory goals of consistency and avoidance of incompatibility, and it establishes a performance objective for the standard.
- Have low additional development and implementation costs relative to the benefits of using the standard. This principle supports the regulatory goals of cost-effectiveness and avoidance of burden.
- Be supported by an ANSI-accredited standards developing organization or other private or public organization that would ensure continuity and efficient updating of the standard over time. This principle supports the regulatory goal of predictability.
- Have timely development, testing, implementation, and updating procedures to achieve administrative simplification benefits faster. This principle establishes a performance objective for the standard.
- Be technologically independent of the computer platforms and transmission protocols used in HIPAA health transactions, except when they are explicitly part of the standard. This principle establishes a performance objective for the standard and supports the regulatory goal of flexibility.
- Be precise and unambiguous but as simple as possible. This principle supports the regulatory goals of predictability and simplicity.
- Keep data collection and paperwork burdens on users as low as is feasible. This principle supports the regulatory goals of cost-effectiveness and avoidance of duplication and burden.
- Incorporate flexibility to adapt more easily to changes in the health care infrastructure (such as new services, organizations, and provider types) and information technology. This principle supports the regulatory goals of flexibility and encouragement of innovation.

We assessed a wide variety of security standards, guidelines and electronic signature standards against the principles listed above, with the overall goal of achieving the maximum benefit for the least cost. We found that there exists no single standard for security or electronic signature that encompasses all the requirements that have been deemed necessary. However, in this particular area, technology is rapidly developing enhancements and better means for accomplishing the stated goals.

D. Affected Entities

1. Health Care Providers

Health care providers that conduct business using electronic transactions with other health care participants (such as other health care providers, health plans, and employers) or maintain electronic health information are encouraged, but are not required to simultaneously implement the proposed security standard. However, if the effective date for the electronic transaction standards is later than the effective date for the security standard, the implementation of the security standard will not be delayed until the standard transactions are in use.

Health care providers that transmit, receive, or maintain health information would incur implementation costs for establishing or updating their security systems. Any negative impact on these health care providers caused by implementing the proposed security standard would generally be related to the initial implementation period for the specific requirements of the security standard. Health care providers that are indirectly involved in electronic transactions (for example, those who submit a paper claim that the health plan transmits electronically to a secondary payer) and do not maintain electronic health information would not be affected.

2. Health Plans

Health plans that engage in electronic health care transactions would have to modify their systems to use the security standard and the electronic signature standard, if used. Health plans that maintain electronic health information would also have to modify their systems to use the security standard. This conversion would have a one-time cost impact on Federal, State and private plans alike.

We recognize that this conversion process has the potential to cause business disruption of some health plans. However, health plans would be able to schedule their implementation of the security standard and other standards in a way that best fits their needs, as long as they meet the deadlines specified in the law.

Implementation of the security standard and the electronic signature standard, if used by the entities, would enhance payment safeguard activities and protect the integrity of the Medicare trust fund by reducing fraud and abuse that occurs when health care information is used by those who are not authorized to receive it. In addition these standards would assist the plans, providers, and clearinghouses to more effectively maintain the security of all health information in their databases.

3. Clearinghouses

Health care clearinghouses would face impacts similar to those experienced by health care providers and health plans. Systems vendors, that provide computer software applications to health care providers and other billers of health care services, would likely be positively affected. These vendors would have to develop software solutions that would allow health care providers and other billers of health care transactions to protect the information in their databases from unwanted access to their systems.

4. Unfunded Mandates

This proposed rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (U.S.C. 1501 *et seq.*) and Executive Order 12875. As discussed in the combined impact analysis referenced above (see **Federal Register**, Volume 63, No. 88), DHHS estimates that implementation of the standards will require the expenditure of more than $100 million by the private sector. Therefore, the rule establishes a Federal private sector mandate and is a significant regulatory action within the meaning of section 202 of UMRA (2 U.S.C. 1532). DHHS has included this statement to address the anticipated effects of the proposed rules pursuant to section 202.

These standards also apply to State and local governments in their roles as health plans or health care providers. Thus, the proposed rules impose unfunded mandates on these entities. While we do not have sufficient information to provide estimates of these impacts, several State Medicaid agencies have estimated that it would cost $1 million per State to implement

all of the HIPAA standards. However, the Congressional Budget Office analysis stated that "States are already in the forefront in administering the Medicaid program electronically; the only costs—which should not be significant—would involve bringing the software and computer systems for the Medicaid programs into compliance with the new standards."

The anticipated benefits and costs of this proposed standard, and other issues raised in section 202 of the UMRA, are addressed in the analysis below, and in the combined impact analysis. In addition, under section 205 of the UMRA (2 U.S.C. 1535), having considered a reasonable number of alternatives as outlined in the preamble to this rule and in the following analysis, the Department has concluded that the rule is the most cost-effective alternative for implementation of DHHS" statutory objective of administrative simplification.

5. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, Public Law 96-354, requires us to prepare a regulatory flexibility analysis if the Secretary certifies that a proposed regulation would have a significant economic impact on a substantial number of small entities. The security and electronic signature standards will affect small entities, such as providers. A more detailed analysis of the impact on small entities is part of the impact analysis we published on May 7, 1998 (63 FR 25320) for all the HIPAA standards. A detailed illustration of the potential impact of the security standard on a small health care provider can be found in the preamble in section D.

E. Factors in Establishing the Security Standard

1. Selection of Security Systems and Procedures

Because there is no national security standard in widespread use throughout the industry, adopting any of the candidate standards would require most health care providers, health plans and health care clearinghouses to conform to the new standard. Implementation of the security standard would require all health plans, health care providers, and health care clearinghouses to establish or revise their security precautions because the proposed standard is not currently in use. The selection of the security standard does not impose a greater burden on the industry than the nonselected options, and presents significant advantages in terms of universality, uniqueness and flexibility.

Only those plans, providers, and clearinghouses that decide to use the digital signature would be affected by the electronic signature standard. Some large health plans, health care providers, and health care clearinghouses that currently exchange health information among trading partners may have security systems and procedures in place to protect the information from unauthorized access. These entities may not incur significant costs to meet the proposed security standard and if they opt not to use the digital signature they would not incur costs to meet the electronic signature requirements. Also, some entities that currently use electronic signatures as an added security measure may also be using digital signature technology. At most, large entities that may have sophisticated security systems in place may only need to revise or update their systems to meet the proposed security standard and electronic signature standard.

2. Complexity of Conversion

The complexity of the conversion would be significantly affected by the volume of claims health plans process electronically and the desire to transmit the claims themselves or to use the services of a VAN or a clearinghouse. If they chose to transmit themselves, they would need to convert to the proposed transaction standards. Specific technology limitations of existing systems could affect the complexity of the conversion. For example, some entities may only have a minimum level of security and procedures in place and therefore may require a full upgrade, while others may already have a very sophisticated system and procedures and require very little enhancement.

3. Cost of Conversion

We expect that most providers, health plans, and clearinghouses that transmit or store data electronically have already implemented some security measures and will primarily need to assess existing security, identify areas of risk, and implement additional measures. We cannot estimate the per-entity cost of implementation because there is no information available regarding the extent to which providers', plans', and clearinghouses' current security practices are deficient. Moreover, some security solutions are almost cost-free to implement (*e.g.*, reminding employees not to post passwords on their monitors) while others are not.

Affected entities will have many choices regarding how they will implement security. Some may choose to assess security using in-house staff, while others will utilize consultants. Practice management software vendors may also provide security consultation services to their customers. Entities may also choose to implement security measures that require hardware or software purchases at the time they do routine equipment upgrades.

The security requirements we are proposing were developed with considerable input from the health care industry, including providers, health plans, clearinghouses, vendors, and standards organizations. Industry members strongly advocated this flexible approach, which permits each affected entity to develop cost-effective security measures. We believe that this approach will yield the lowest implementation cost to industry while assuring that health information is safeguarded. We solicit input regarding implementation costs.

We are unable to estimate, of the nation's 4 million-plus health plans and 1.2 million-plus providers, the number of entities that would require security systems and procedures because they conduct electronic transactions or maintain electronic health information. Nor are we able to estimate the number of entities that neither conduct electronic transactions nor maintain electronic health information but may choose to do so at some future time. (These would be entities that send and receive paper transactions and maintain paper records and thus would not be affected because they would have no need to implement security standards.) However, we are aware of the possibility that those small entities that currently process claims electronically or maintain electronic health information may not be able to continue to do so due to the cost of establishing security systems to meet the requirements of the proposed security standard. Those entities that are not able to bill and exchange health information electronically may use clearinghouses. We believe that the proposed security standard represents the minimum necessary for adequate protection of health information in an electronic format. As discussed earlier in this preamble, the security requirements are both scalable and technically flexible; and while the law requires each health plan that is not a small plan to comply with the security and electronic signature requirements no later than 24 months after the effective date of the final rule, small plans will be allowed an additional 12 months to comply.

Since we are unable to estimate the number of entities, we are also unable to estimate the cost to the entities that will process electronic transactions.

However, we believe that the cost of establishing security systems and procedures is a portion of the costs associated with converting to the transaction standards that are required under HIPAA.

This discussion on conversion costs relates only to health plans, health care providers, and health care clearinghouses that are required to follow the security standard to maintain, transmit or receive electronic health information. Other entities would not be required to follow the security standard and procedures until they choose to maintain, transmit, or receive electronic health information. The cost of establishing security systems and procedures for entities that do not transmit, receive or maintain health information electronically is not included in our estimates.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

As discussed below, we are soliciting comment on the recordkeeping requirements, as referenced in § 142.308 of this document. In addition, we are soliciting comment on the applicability of the PRA as it may relate to the requirement to use the standard adopted in § 142.310 of this regulation.

Section 142.308 Security Standard

In summary, each entity designated in § 142.302 must maintain documentation demonstrating the development, implementation, and maintenance of appropriate security measures that include, at a minimum, the requirements and implementation features set forth in this section. In addition, entities must maintain necessary documentation to demonstrate that these measures have been periodically reviewed, validated, updated, and kept current.

While we solicit comment on these recordkeeping requirements we explicitly solicit comment on the burden associated with maintaining documentation related to the implementation the requirements set forth in § 142.308. Since the level of documentation necessary to demonstrate compliance with these requirements is dependent upon individual business needs and the fact that we do not prescribe the form, format, or degree of documentation necessary to demonstrate compliance, we are currently unable to accurately estimate the degree of recordkeeping burden that will be experienced by the varying entities. Therefore, commentors should provide an estimate of: (1) the initial recordkeeping burden associated with meeting these requirements and (2) the recordkeeping burden associated with maintaining documentation to demonstrate that the measures have been periodically reviewed, validated, updated, and kept current.

Below is a discussion of the applicability of the PRA as it may relate to the adoption of the standard referenced in § 142.310 of this regulation.

Section 142.310 Electronic Signature Standard

In summary, any entity electing to use an electronic signature in a transaction as defined in § 142.103, or if an electronic signature is required by a transaction standard adopted by the Secretary, the entity must apply the electronic signature standard described in paragraph (b) of this section to that transaction.

Discussion

The emerging and increasing use of health care EDI standards and transactions raises the issue of the applicability of the PRA. The question arises whether a regulation that adopts an EDI standard used to exchange certain information constitutes an information collection subject to the PRA.

In particular, we are still considering whether the use of any EDI transaction standard, such as the electronic signature described in this regulation, should be viewed or regarded as a standardized electronic collection of information. If it is a standardized electronic information collection, then the requirement by the Federal government on the industry to accept and transmit the information may be subject to OMB review and approval under the PRA.

We invite public comment on the issues discussed above. If the requirements, as set forth in § 142.310 are determined to be subject to the PRA, we will submit these requirements to OMB for PRA approval. If you comment on these information collection and recordkeeping requirements, please e-mail comments to JBurke1@hcfa.gov (Attn: HCFA–0049) or mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Attn: John Burke HCFA–0049, HCFA Reports Clearance Officer

And

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer

List of Subjects in 45 CFR Part 142

Administrative practice and procedure, Health facilities, Health insurance, Hospitals, Medicaid, Medicare, Report and recordkeeping requirement.

45 CFR subtitle A, subchapter B, would be amended by adding part 42 to read as follows:

Note to Reader: This proposed rule is one of several proposed rules that are being published to implement the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996. We propose to establish a new 45 CFR Part 142. Proposed Subpart A—General Provisions is exactly the same in each rule unless we have added new sections or definitions to incorporate additional general information. The subparts that follow relate to the specific provisions announced separately in each proposed rule. When we publish the first final rule, each subsequent final rule will revise or add to the text that is set out in the first final rule.

PART 142—ADMINISTRATIVE REQUIREMENTS

Subpart A—General Provisions

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142.312 Effective date of the initial implementation of the security and electronic standards.

Authority: Sections 1173 and 1175 of the Social Security Act (42 U.S.C. 1320d–2 and 1320d–4).

Subpart A—General Provisions

§ 142.101 Statutory basis and purpose.

Sections 1171 through 1179 of the Social Security Act, 42 U.S.C. 1320d, as added by section 262 of the Health Insurance Portability and Accountability Act of 1996, require HHS to adopt national standards for the electronic exchange of health information in the health care system. The purpose of the sections of this part is to promote administrative simplification.

§ 142.102 Applicability.

(a) The standards adopted or designated under this part apply, in whole or in part, to the following:

(1) A health plan.

(2) A health care clearinghouse when doing the following:

(i) Transmitting a standard transaction (as defined in § 142.103) to a health care provider or health plan.

(ii) Receiving a standard transaction from a health care provider or health plan.

(iii) Transmitting and receiving the standard transactions when interacting with another health care clearinghouse.

(3) A health care provider when transmitting an electronic transaction as defined in § 142.103.

(b) Means of compliance are stated in greater detail in § 142.105.

§ 142.103 Definitions.

For purposes of this part, the following definitions apply:

Code set means any set of codes used for encoding data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes.

Health care clearinghouse means a public or private entity that processes or facilitates the processing of nonstandard data elements of health information into standard data elements. The entity receives health care transactions from health care providers or other entities, translates the data from a given format into one acceptable to the intended payer or payers, and forwards the processed transaction to appropriate payers and clearinghouses. Billing services, repricing companies, community health management information systems, community health information systems, and "value-added" networks and switches are considered to be health care clearinghouses for purposes of this part.

Health care provider means a provider of services as defined in section 1861(u) of the Social Security Act, 42 U.S.C. 1395x, a provider of medical or other health services as defined in section 1861(s) of the Social Security Act, and any other person who furnishes or bills and is paid for health care services or supplies in the normal course of business.

Health information means any information, whether oral or recorded in any form or medium, that—

(1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

Health plan means an individual or group plan that provides, or pays the cost of, medical care. Health plan includes the following, singly or in combination:

(1) Group health plan. A group health plan is an employee welfare benefit plan (as currently defined in section 3(1) of the Employee Retirement Income and Security Act of 1974, 29 U.S.C. 1002(1)), including insured and self-insured plans, to the extent that the plan provides medical care, including items and services paid for as medical care, to employees or their dependents directly or through insurance, or otherwise, and—

(i) Has 50 or more participants; or

(ii) Is administered by an entity other than the employer that established and maintains the plan.

(2) Health insurance issuer. A health insurance issuer is an insurance company, insurance service, or insurance organization that is licensed to engage in the business of insurance in a State and is subject to State law that regulates insurance.

(3) Health maintenance organization. A health maintenance organization is a Federally qualified health maintenance organization, an organization recognized as a health maintenance organization under State law, or a similar organization regulated for solvency under State law in the same manner and to the same extent as such a health maintenance organization.

(4) Part A or Part B of the Medicare program under title XVIII of the Social Security Act.

(5) The Medicaid program under title XIX of the Social Security Act.

(6) A Medicare supplemental policy (as defined in section 1882(g)(1) of the Social Security Act, 42 U.S.C. 1395ss).

(7) A long-term care policy, including a nursing home fixed-indemnity policy.

(8) An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers.

(9) The health care program for active military personnel under title 10 of the United States Code.

(10) The veterans health care program under 38 U.S.C. chapter 17.

(11) The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as defined in 10 U.S.C. 1072(4).

(12) The Indian Health Service program under the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*).

(13) The Federal Employees Health Benefits Program under 5 U.S.C. chapter 89.

(14) Any other individual or group health plan, or combination thereof, that provides or pays for the cost of medical care.

Medical care means the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any body structure or function of the body; amounts paid for transportation primarily for and essential to these items; and amounts paid for insurance covering the items and the transportation specified in this definition.

Participant means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan that covers employees of that employer or members of such an organization, or whose beneficiaries may be eligible to receive any of these benefits. "Employee" includes an individual who is treated as an employee under section 401(c)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 401(c)(1)).

Small health plan means a group health plan or individual health plan with fewer than 50 participants.

Standard means a set of rules for a set of codes, data elements, transactions, or identifiers promulgated either by an organization accredited by the American National Standards Institute or HHS for the electronic transmission of health information.

Transaction means the exchange of information between two parties to carry out financial and administrative activities related to health care. It includes the following:

(1) Health claims or equivalent encounter information.

(2) Health care payment and remittance advice.

(3) Coordination of benefits.

(4) Health claims status.

(5) Enrollment and disenrollment in a health plan.

(6) Eligibility for a health plan.

(7) Health plan premium payments.

(8) Referral certification and authorization.

(9) First report of injury.

(10) Health claims attachments.

(11) Other transactions as the Secretary may prescribe by regulation.

§ 142.104 General requirements for health plans.

If a person conducts a transaction (as defined in § 142.103) with a health plan as a standard transaction, the following apply:

(a) The health plan may not refuse to conduct the transaction as a standard transaction.

(b) The health plan may not delay the transaction or otherwise adversely affect, or attempt to adversely affect, the person or the transaction on the ground that the transaction is a standard transaction.

(c) The health information transmitted and received in connection with the transaction must be in the form of standard data elements of health information.

(d) A health plan that conducts transactions through an agent must assure that the agent meets all the requirements of this part that apply to the health plan.

§ 142.105 Compliance using a health care clearinghouse.

(a) Any person or other entity subject to the requirements of this part may meet the requirements to accept and transmit standard transactions by either—

(1) Transmitting and receiving standard data elements; or

(2) Submitting nonstandard data elements to a health care clearinghouse for processing into standard data elements and transmission by the health care clearinghouse and receiving standard data elements through the health care clearinghouse.

(b) The transmission, under contract, of nonstandard data elements between a health plan or a health care provider and its agent health care clearinghouse is not a violation of the requirements of this part.

§ 142.106 Effective dates of a modification to a standard or implementation specification.

HHS may modify a standard or implementation specification after the first year in which HHS requires the standard or implementation specification to be used, but not more frequently than once every 12 months. If HHS adopts a modification to a standard or implementation specification, the implementation date of the modified standard or implementation specification may be no earlier than 180 days following the adoption of the modification. HHS determines the actual date, taking into account the time needed to comply due to the nature and extent of the modification. HHS may extend the time for compliance for small health plans.

Subpart B—[Reserved]

Subpart C—Security and Electronic Signature Standards

§ 142.302 Applicability and scope.

The standards adopted or designated under this subpart apply, in whole or in part, to the following:

(a) A health plan.

(b) A health care clearinghouse or health care provider that takes one of the following actions:

(1) Processes any electronic transmission between any combination of health care entities listed in this section.

(2) Electronically maintains any health information used in an electronic transmission that has been sent or received between any combination of health care entities listed in this section.

§ 142.304 Definitions.

For purposes of this subpart, the following definitions apply:

Access refers to the ability or the means necessary to read, write, modify, or communicate data/information or otherwise make use of any system resource.

Access control refers to a method of restricting access to resources, allowing only privileged entities access. Types of access control include, among others, mandatory access control, discretionary access control, time-of-day, and classification.

Authentication refers to the corroboration that an entity is the one claimed.

Contingency plan refers to a plan for responding to a system emergency. The plan includes performing backups, preparing critical facilities that can be used to facilitate continuity of operations in the event of an emergency, and recovering from a disaster.

Encryption (or encipherment) refers to transforming confidential plaintext into ciphertext to protect it. An encryption algorithm combines plaintext with other values called keys, or ciphers, so the data becomes unintelligible. Once encrypted, data can be stored or transmitted over unsecured lines. Decrypting data reverses the encryption algorithm process and makes the plaintext available for further processing.

Password refers to confidential authentication information composed of a string of characters.

Role-based access control (RBAC) is an alternative to traditional access control models (e.g., discretionary or non-discretionary access control policies) that permits the specification and enforcement of enterprise-specific security policies in a way that maps more naturally to an organization's structure and business activities. With RBAC, rather than attempting to map an organization's security policy to a relatively low-level set of technical controls (typically, access control lists), each user is assigned to one or more predefined roles, each of which has been assigned the various privileges needed to perform that role.

Token refers to a physical item necessary for user identification when used in the context of authentication. For example, an electronic device that can be inserted in a door or a computer system to obtain access.

User-based access refers to a security mechanism used to grant users of a system access based upon the identity of the user.

§ 142.306 Rules for the security standard.

(a) An entity must apply the security standard described in § 142.308 to all health information pertaining to an individual that is electronically maintained or electronically transmitted.

(b) If a health care clearinghouse is part of a larger organization, it must assure that all health information pertaining to an individual is protected from unauthorized access by the larger organization.

§ 142.308 Security standard.

Each entity designated in § 142.302 must assess potential risks and vulnerabilities to the individual health data in its possession and develop, implement, and maintain appropriate security measures. These measures must be documented and kept current, and must include, at a minimum, the following requirements and implementation features:

(a) *Administrative procedures to guard data integrity, confidentiality, and availability* (documented, formal practices to manage the selection and execution of security measures to protect data, and to manage the conduct of personnel in relation to the protection of data). These procedures include the following requirements:

(1) Certification. (The technical evaluation performed as part of, and in support of, the accreditation process that establishes the extent to which a particular computer system or network design and implementation meet a pre-specified set of security requirements. This evaluation may be performed internally or by an external accrediting agency.)

(2) A chain of trust partner agreement (a contract entered into by two business partners in which the partners agree to electronically exchange data and protect the integrity and confidentiality of the data exchanged).

(3) A contingency plan, a routinely updated plan for responding to a system emergency, that includes performing backups, preparing critical facilities that can be used to facilitate continuity of operations in the event of an emergency, and recovering from a disaster. The plan must include all of the following implementation features:

(i) An applications and data criticality analysis (an entity's formal assessment of the sensitivity, vulnerabilities, and security of its programs and information it receives, manipulates, stores, and/or transmits).

(ii) Data backup plan (a documented and routinely updated plan to create and maintain, for a specific period of time, retrievable exact copies of information).

(iii) A disaster recovery plan (the part of an overall contingency plan that contains a process enabling an enterprise to restore any loss of data in the event of fire, vandalism, natural disaster, or system failure).

(iv) Emergency mode operation plan (the part of an overall contingency plan that contains a process enabling an enterprise to continue to operate in the event of fire, vandalism, natural disaster, or system failure).

(v) Testing and revision procedures (the documented process of periodic testing of written contingency plans to discover weaknesses and the subsequent process of revising the documentation, if necessary).

(4) Formal mechanism for processing records (documented policies and procedures for the routine, and nonroutine, receipt, manipulation, storage, dissemination, transmission, and/or disposal of health information).

(5) Information access control (formal, documented policies and procedures for granting different levels of access to health care information) that includes all of the following implementation features:

(i) Access authorization (information-use policies and procedures that establish the rules for granting access, (for example, to a terminal, transaction, program, process, or some other user.)

(ii) Access establishment (security policies and rules that determine an entity's initial right of access to a terminal, transaction, program, process or some other user).

(iii) Access modification (security policies and rules that determine the types of, and reasons for, modification to an entity's established right of access, to a terminal, transaction, program, process, or some other user.)

(6) Internal audit (in-house review of the records of system activity (such as logins, file accesses, and security incidents) maintained by an organization).

(7) Personnel security (all personnel who have access to any sensitive information have the required authorities as well as all appropriate clearances) that includes all of the following implementation features:

(i) Assuring supervision of maintenance personnel by an authorized, knowledgeable person. These procedures are documented formal procedures and instructions for the oversight of maintenance personnel when the personnel are near health information pertaining to an individual.

(ii) Maintaining a record of access authorizations (ongoing documentation and review of the levels of access granted to a user, program, or procedure accessing health information).

(iii) Assuring that operating and maintenance personnel have proper access authorization (formal documented policies and procedures for determining the access level to be granted to individuals working on, or near, health information).

(iv) Establishing personnel clearance procedures (a protective measure applied to determine that an individual's access to sensitive unclassified automated information is admissible).

(v) Establishing and maintaining personnel security policies and procedures (formal, documentation of procedures to ensure that all personnel who have access to sensitive information have the required authority as well as appropriate clearances).

(vi) Assuring that system users, including maintenance personnel, receive security awareness training.

(8) Security configuration management (measures, practices, and procedures for the security of information systems that must be coordinated and integrated with each other and other measures, practices, and procedures of the organization established in order to create a coherent system of security) that includes all of the following implementation features:

(i) Documentation (written security plans, rules, procedures, and instructions concerning all components of an entity's security).

(ii) Hardware and software installation and maintenance review and testing for security features (formal, documented procedures for connecting and loading new equipment and programs, periodic review of the maintenance occurring on that equipment and programs, and periodic security testing of the security attributes of that hardware/software).

(iii) Inventory (the formal, documented identification of hardware and software assets).

(iv) Security testing (process used to determine that the security features of a system are implemented as designed and that they are adequate for a proposed applications environment; this process includes hands-on functional testing, penetration testing, and verification).

(v) Virus checking. (The act of running a computer program that identifies and disables:

(A) Another "virus" computer program, typically hidden, that attaches itself to other programs and has the ability to replicate.

(B) A code fragment (not an independent program) that reproduces by attaching to another program.

(C) A code embedded within a program that causes a copy of itself to be inserted in one or more other programs.)

(9) Security incident procedures (formal documented instructions for reporting security breaches) that include all of the following implementation features:

(i) Report procedures (documented formal mechanism employed to document security incidents).

(ii) Response procedures (documented formal rules or instructions for actions to be taken as a result of the receipt of a security incident report).

(10) Security management process (creation, administration, and oversight of policies to ensure the prevention, detection, containment, and correction of security breaches involving risk analysis and risk management). It includes the establishment of accountability, management controls (policies and education), electronic controls, physical security, and penalties for the abuse and misuse of its assets (both physical and electronic) that includes all of the following implementation features:

(i) Risk analysis, a process whereby cost-effective security/control measures may be selected by balancing the costs of various security/control measures against the losses that would be expected if these measures were not in place.

(ii) Risk management (process of assessing risk, taking steps to reduce risk to an acceptable level, and maintaining that level of risk).

(iii) Sanction policies and procedures (statements regarding disciplinary actions that are communicated to all employees, agents, and contractors; for example, verbal warning, notice of disciplinary action placed in personnel files, removal of system privileges, termination of employment, and contract penalties). They must include employee, agent, and contractor notice of civil or criminal penalties for misuse or misappropriation of health information and must make employees, agents, and contractors aware that violations may result in notification to law enforcement officials and regulatory, accreditation, and licensure organizations.

(iv) Security policy (statement(s) of information values, protection responsibilities, and organization commitment for a system). This is the framework within which an entity establishes needed levels of information security to achieve the desired confidentiality goals.

(11) Termination procedures (formal documented instructions, which include appropriate security measures, for the ending of an employee's employment or an internal/external user's access) that include procedures for all of the following implementation features:

(i) Changing locks (a documented procedure for changing combinations of locking mechanisms, both on a recurring basis and when personnel knowledgeable of combinations no longer have a need to know or require access to the protected facility or system).

(ii) Removal from access lists (physical eradication of an entity's access privileges).

(iii) Removal of user account(s) (termination or deletion of an individual's access privileges to the information, services, and resources for which they currently have clearance, authorization, and need-to-know when such clearance, authorization and need-to-know no longer exists).

(iv) Turning in of keys, tokens, or cards that allow access (formal, documented procedure to ensure all physical items that allow a terminated employee to access a property, building, or equipment are retrieved from that employee, preferably before termination).

(12) Training (education concerning the vulnerabilities of the health information in an entity's possession and ways to ensure the protection of that information) that includes all of the following implementation features:

(i) Awareness training for all personnel, including management personnel (in security awareness, including, but not limited to, password maintenance, incident reporting, and viruses and other forms of malicious software).

(ii) Periodic security reminders (employees, agents, and contractors are made aware of security concerns on an ongoing basis).

(iii) User education concerning virus protection (training relative to user awareness of the potential harm that can be caused by a virus, how to prevent the introduction of a virus to a computer system, and what to do if a virus is detected).

(iv) User education in importance of monitoring log-in success or failure and how to report discrepancies (training in the user's responsibility to ensure the security of health care information).

(v) User education in password management (type of user training in the rules to be followed in creating and changing passwords and the need to keep them confidential).

(b) *Physical safeguards to guard data integrity, confidentiality, and availability.* Protection of physical computer systems and related buildings and equipment from fire and other natural and environmental hazards, as well as from intrusion. It covers the use of locks, keys, and administrative measures used to control access to computer systems and facilities. Physical safeguards must include all of the following requirements and implementation features:

(1) Assigned security responsibility (practices established by management to manage and supervise the execution and use of security measures to protect data and to manage and supervise the conduct of personnel in relation to the protection of data).

(2) Media controls (formal, documented policies and procedures that govern the receipt and removal of hardware/software (such as diskettes and tapes) into and out of a facility) that include all of the following implementation features:

(i) Access control.

(ii) Accountability (the property that ensures that the actions of an entity can be traced uniquely to that entity).

(iii) Data backup (a retrievable, exact copy of information).

(iv) Data storage (the retention of health care information pertaining to an individual in an electronic format).

(v) Disposal (final disposition of electronic data, and/or the hardware on which electronic data is stored).

(3) Physical access controls (limited access) (formal, documented policies and procedures to be followed to limit physical access to an entity while ensuring that properly authorized access is allowed) that include all of the following implementation features:

(i) Disaster recovery (the process enabling an entity to restore any loss of data in the event of fire, vandalism, natural disaster, or system failure).

(ii) An emergency mode operation (access controls in place that enable an entity to continue to operate in the event of fire, vandalism, natural disaster, or system failure).

(iii) Equipment control (into and out of site) (documented security procedures for bringing hardware and software into and out of a facility and for maintaining a record of that equipment. This includes, but is not limited to, the marking, handling, and disposal of hardware and storage media.)

(iv) A facility security plan (a plan to safeguard the premises and building (exterior and interior) from unauthorized physical access and to safeguard the equipment therein from unauthorized physical access, tampering, and theft).

(v) Procedures for verifying access authorizations before granting physical access (formal, documented policies and instructions for validating the access privileges of an entity before granting those privileges).

(vi) Maintenance records (documentation of repairs and modifications to the physical components of a facility, such as

hardware, software, walls, doors, and locks).

(vii) Need-to-know procedures for personnel access (a security principle stating that a user should have access only to the data he or she needs to perform a particular function).

(viii) Procedures to sign in visitors and provide escorts, if appropriate (formal documented procedure governing the reception and hosting of visitors).

(ix) Testing and revision (the restriction of program testing and revision to formally authorized personnel).

(4) Policy and guidelines on work station use (documented instructions/procedures delineating the proper functions to be performed, the manner in which those functions are to be performed, and the physical attributes of the surroundings of a specific computer terminal site or type of site, dependent upon the sensitivity of the information accessed from that site).

(5) A secure work station location (physical safeguards to eliminate or minimize the possibility of unauthorized access to information; for example, locating a terminal used to access sensitive information in a locked room and restricting access to that room to authorized personnel, not placing a terminal used to access patient information in any area of a doctor's office where the screen contents can be viewed from the reception area).

(6) Security awareness training (information security awareness training programs in which all employees, agents, and contractors must participate, including, based on job responsibilities, customized education programs that focus on issues regarding use of health information and responsibilities regarding confidentiality and security).

(c) *Technical security services to guard data integrity, confidentiality, and availability* (the processes that are put in place to protect information and to control individual access to information). These services include the following requirements and implementation features:

(1) The technical security services must include all of the following requirements and the specified implementation features:

(i) Access control that includes:

(A) A procedure for emergency access (documented instructions for obtaining necessary information during a crisis), and

(B) At least one of the following implementation features:

(*1*) Context-based access (an access control procedure based on the context of a transaction (as opposed to being based on attributes of the initiator or target)).

(*2*) Role-based access.

(*3*) User-based access.

(C) The optional use of encryption.

(ii) Audit controls (mechanisms employed to record and examine system activity).

(iii) Authorization control (the mechanism for obtaining consent for the use and disclosure of health information) that includes at least one of the following implementation features:

(A) Role-based access.

(B) User-based access.

(iv) Data authentication. (The corroboration that data has not been altered or destroyed in an unauthorized manner. Examples of how data corroboration may be assured include the use of a check sum, double keying, a message authentication code, or digital signature.)

(v) Entity authentication (the corroboration that an entity is the one claimed) that includes:

(A) Automatic logoff (a security procedure that causes an electronic session to terminate after a predetermined time of inactivity, such as 15 minutes), and

(B) Unique user identifier (a combination name/number assigned and maintained in security procedures for identifying and tracking individual user identity).

(C) At least one of the following implementation features:

(*1*) Biometric identification (an identification system that identifies a human from a measurement of a physical feature or repeatable action of the individual (for example, hand geometry, retinal scan, iris scan, fingerprint patterns, facial characteristics, DNA sequence characteristics, voice prints, and hand written signature)).

(*2*) Password.

(*3*) Personal identification number (PIN) (a number or code assigned to an individual and used to provide verification of identity).

(*4*) A telephone callback procedure (method of authenticating the identity of the receiver and sender of information through a series of "questions" and "answers" sent back and forth establishing the identity of each). For example, when the communicating systems exchange a series of identification codes as part of the initiation of a session to exchange information, or when a host computer disconnects the initial session before the authentication is complete, and the host calls the user back to establish a session at a predetermined telephone number.

(*5*) Token.

(2) [Reserved]

(d) *Technical security mechanisms* (processes that are put in place to guard against unauthorized access to data that is transmitted over a communications network).

(1) If an entity uses communications or network controls, its security standards for technical security mechanisms must include the following:

(i) The following implementation features:

(A) Integrity controls (a security mechanism employed to ensure the validity of the information being electronically transmitted or stored).

(B) Message authentication (ensuring, typically with a message authentication code, that a message received (usually via a network) matches the message sent).

(ii) One of the following implementation features:

(A) Access controls (protection of sensitive communications transmissions over open or private networks so that they cannot be easily intercepted and interpreted by parties other than the intended recipient).

(B) Encryption.

(2) If an entity uses network controls (to protect sensitive communication that is transmitted electronically over open networks so that it cannot be easily intercepted and interpreted by parties other than the intended recipient), its technical security mechanisms must include all of the following implementation features:

(i) Alarm. (In communication systems, any device that can sense an abnormal condition within the system and provide, either locally or remotely, a signal indicating the presence of the abnormality. The signal may be in any desired form ranging from a simple contact closure (or opening) to a time-phased automatic shutdown and restart cycle.)

(ii) Audit trail (the data collected and potentially used to facilitate a security audit).

(iii) Entity authentication (a communications or network mechanism to irrefutably identify authorized users, programs, and processes and to deny access to unauthorized users, programs, and processes).

(iv) Event reporting (a network message indicating operational irregularities in physical elements of a network or a response to the occurrence of a significant task, typically the completion of a request for information).

§ 142.310 Electronic signature standard.

(a) *General rule.* If an entity elects to use an electronic signature in a

transaction as defined in § 142.103, or if an electronic signature is required by a transaction standard adopted by the Secretary, the entity must apply the electronic signature standard described in paragraph (b) of this section to that transaction.

(b) *Standard.*

(1) An electronic signature is the attribute affixed to an electronic document to bind it to a particular entity. An electronic signature secures the user authentication (proof of claimed identity) at the time the signature is generated; creates the logical manifestation of signature (including the possibility for multiple parties to sign a document and have the order of application recognized and proven); supplies additional information such as time stamp and signature purpose specific to that user; and ensures the integrity of the signed document to enable transportability of data, interoperability, independent verifiability, and continuity of signature capability. Verifying a signature on a document verifies the integrity of the document and associated attributes and verifies the identity of the signer.

(2) The standard for electronic signature is a digital signature. A "digital signature" is an electronic signature based upon cryptographic methods of originator authentication, computed by using a set of rules and a set of parameters so that the identity of the signer and the integrity of the data can be verified.

(c) *Required implementation features.* If an entity uses electronic signatures, the signature method must assure all of the following features:

(1) Message integrity (the assurance of unaltered transmission and receipt of a message from the sender to the intended recipient).

(2) Nonrepudiation (strong and substantial evidence of the identity of the signer of a message, and of message integrity, sufficient to prevent a party from successfully denying the origin, submission, or delivery of the message and the integrity of its contents).

(3) User authentication (the provision of assurance of the claimed identity of an entity).

(d) *Optional implementation features.* If an entity uses electronic signatures, the entity may also use, among others, any of the following implementation features:

(1) Ability to add attributes (one possible capability of a digital signature technology; for example, the ability to add a time stamp as part of a digital signature).

(2) Continuity of signature capability (the concept that the public verification of a signature must not compromise the ability of the signer to apply additional secure signatures at a later date).

(3) Countersignatures. (The capability to prove the order of application of signatures. This is analogous to the normal business practice of countersignatures, where a party signs a document that has already been signed by another party.)

(4) Independent verifiability (the capability to verify the signature without the cooperation of the signer).

(5) Interoperability (the applications used on either side of a communication, between trading partners and/or between internal components of an entity, are able to read and correctly interpret the information communicated from one to the other).

(6) Multiple signatures. (With this feature, multiple parties are able to sign a document. Conceptually, multiple signatures are simply appended to the document.)

(7) Transportability of data (the ability of a signed document to be transported over an insecure network to another system, while maintaining the integrity of the document, including content, signatures, signature attributes, and (if present) document attributes).

§ 142.312 Effective date of the initial implementation of the security and electronic signature standards.

(a) *General rules.*

(1) Except for a small health plan (defined at § 142.103), each entity designated in § 142.302 must comply with the requirements of this subpart by [24 months after the effective date of the final rule in the **Federal Register**].

(2) A delay in an effective date for using a standard transaction described in this part does not delay the effective dates described in paragraphs (a)(1) and (b) of this section.

(3) The requirements of the security standard may be implemented over time. Implementation must be completed by the applicable effective date.

(b) *Small health plans.* A small health plan must comply with the requirements of this subpart by [36 months after the effective date of the final rule in the **Federal Register**].

Authority: Sections 1173 and 1175 of the Social Security Act (42 U.S.C. 1320d–2 and 1320d–4).

Dated: July 15, 1998.

Donna E. Shalala,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Addendum 1

HIPAA Security Matrix

Please Note: (1) While we have attempted to categorize security requirements for ease of understanding and reading clarity, there are overlapping areas on the matrix in which the same requirements are restated in a slightly different context. (2) To ensure that no Requirement or Implementation feature is considered more important than another, this matrix has been presented, within each subject area, in alphabetical order.

ADMINISTRATIVE PROCEDURES TO GUARD DATA INTEGRITY, CONFIDENTIALITY, AND AVAILABILITY

Requirement	Implementation
Certification	
Chain of trust partner agreement	
Contingency plan (all listed implementation features must be implemented).	Applications and data criticality analysis. Data backup plan. Disaster recovery plan. Emergency mode operation plan. Testing and revision.
Formal mechanism for processing records.	
Information access control (all listed implementation features must be implemented).	Access authorization. Access establishment. Access modification.
Internal audit	

ADMINISTRATIVE PROCEDURES TO GUARD DATA INTEGRITY, CONFIDENTIALITY, AND AVAILABILITY—Continued

Requirement	Implementation
Personnel security (all listed implementation features must be implemented).	Assure supervision of maintenance personnel by authorized, knowledgeable person.
	Maintainance of record of access authorizations.
	Operating, and in some cases, maintenance personnel have proper access authorization.
	Personnel clearance procedure.
	Personnel security policy/procedure.
	System users, including maintenance personnel, trained in security.
Security configuration mgmt. (all listed implementation features must be implemented).	Documentation.
	Hardware/software installation & maintenance review and testing for security features.
	Inventory.
	Security Testing.
	Virus checking.
Security incident procedures (all listed implementation features must be implemented).	Report procedures.
	Response procedures.
Security management process (all listed implementation features must be implemented).	Risk analysis.
	Risk management.
	Sanction policy.
	Security policy.
Termination procedures (all listed implementation features must be implemented).	Combination locks changed.
	Removal from access lists.
	Removal of user account(s).
	Turn in keys, token or cards that allow access.
Training (all listed implementation features must be implemented)	Awareness training for all personnel (including mgmt).
	Periodic security reminders.
	User education concerning virus protection.
	User education in importance of monitoring log in success/failure, and how to report discrepancies.
	User education in password management.

PHYSICAL SAFEGUARDS TO GUARD DATA INTEGRITY, CONFIDENTIALITY, AND AVAILABILITY

Requirement	Implementation
Assigned security responsibility	
Media controls (all listed implementation features must be implemented).	Access control.
	Accountability (tracking mechanism).
	Data backup.
	Data storage.
	Disposal.
Physical access controls (limited access) (all listed implementation features must be implemented).	Disaster recovery.
	Emergency mode operation.
	Equipment control (into and out of site).
	Facility security plan.
	Procedures for verifying access authorizations prior to physical access.
	Maintenance records.
	Need-to-know procedures for personnel access.
	Sign-in for visitors and escort, if appropriate.
	Testing and revision.
Policy/guideline on work station use	
Secure work station location	
Security awareness training	

TECHNICAL SECURITY SERVICES TO GUARD DATA INTEGRITY, CONFIDENTIALITY, AND AVAILABILITY

Requirement	Implementation
Access control (The following implementation feature must be implemented: Procedure for emergency access. In addition, at least one of the following three implementation features must be implemented: Context-based access, Roll-based access, User-based access. The use of Encryption is optional).	Context-based access.
	Encryption.
	Procedure for emergency access.
	Role-based access.
	User-based access.
Audit controls	
Authorization Control (At least one of the listed implementation features must be implemented).	Role-based access.
	User-based access
Data Authentication	

TECHNICAL SECURITY SERVICES TO GUARD DATA INTEGRITY, CONFIDENTIALITY, AND AVAILABILITY—Continued

Requirement	Implementation
Entity Authentication (The following implementation features must be implemented: Automatic logoff, Unique user identification. In addition, at least one of the other listed implementation features must be implemented).	Automatic logoff. Biometric. Password. PIN. Telephone callback. Token. Unique user identification.

TECHNICAL SECURITY MECHANISMS TO GUARD AGAINST UNAUTHORIZED ACCESS TO DATA THAT IS TRANSMITTED OVER A COMMUNICATIONS NETWORK

Requirement	Implementation
Communications/network controls (The following implementation features must be implemented: Integrity controls, Message authentication. If communications or networking is employed, one of the following implementation features must be implemented: Access controls, Encryption. In addition, if using a network, the following four implementation features must be implemented: Alarm, Audit trail, Entity authentication, Event reporting).	Access controls. Alarm. Audit trail. Encryption. Entity authentication. Event reporting. Integrity controls. Message authentication.

ELECTRONIC SIGNATURE

Requirement	Implementation
Digital signature (If digital signature is employed, the following three implementation features must be implemented: Message integrity, Non-repudiation, User authentication. Other implementation features are optional).	Ability to add attributes. Continuity of signature capability. Counter signatures. Independent verifiability. Interoperability. Message integrity. Multiple Signatures. Non-repudiation. Transportability. User authentication.

Addendum 2—HIPAA Security and Electronic Signature Standards Glossary of Terms

Please Note:

(1) While we have attempted to categorize security requirements for ease of understanding and reading clarity, there are overlapping areas on the matrix in which the same requirements are restated in a slightly different context.

(2) While not appearing on the matrix, a number of terms listed below do appear in the glossary descriptions and have been supplied for additional clarity:

(3) The definitions provided in this document have been obtained from multiple sources.

Ability to add attributes:
One possible capability of a digital signature technology, for example, the ability to add a time stamp as part of a digital signature.
Part of digital signature on the matrix.

Access:
The ability or the means necessary to read, write, modify, or communicate data/information or otherwise make use of any system resource.

Access authorization:
Information-use policies/procedures that establish the rules for granting and/or restricting access to a user, terminal, transaction, program, or process.
Part of information access control on the matrix.

Access control:
A method of restricting access to resources, allowing only privileged entities access. (PGP, Inc.)
Types of access control include, among others, mandatory access control, discretionary access control, time-of-day, classification, and subject-object separation.
Part of Media Controls on the matrix.
Part of technical security services to control and monitor access to information on the matrix.

Access controls:
The protection of sensitive communications transmissions over open or private networks so that it cannot be easily intercepted and interpreted by parties other than the intended recipient.
Part of mechanisms to prevent unauthorized access to data that is transmitted over a communications network on the matrix.

Access establishment:
The security policies, and the rules established therein, that determine an entity's initial right of access to a terminal, transaction, program, or process.
Part of information access control on the matrix.

Access Level:
A level associated with an individual who may be accessing information (for example, a clearance level) or with the information which may be accessed (for example, a classification level). (NRC, 1991, as cited in HISB, DRAFT GLOSSARY OF TERMS RELATED TO INFORMATION SECURITY IN HEALTH CARE INFORMATION SYSTEMS draft Glossary of Terms Related to Information Security in Health Care Information Systems)

Access modification:
The security policies, and the rules established therein, that determine types of, and reasons for, modification to an entity's established right of access to a terminal, transaction, program, or process.
Part of information access control on the matrix.

Accountability:
The property that ensures that the actions of an entity can be traced uniquely to that entity. (ASTM E1762—95)

Part of media controls on the matrix.

Administrative procedures to guard data integrity, confidentiality and availability:
Documented, formal practices to manage (1) the selection and execution of security measures to protect data, and (2) the conduct of personnel in relation to the protection of data.
A section of the matrix.

Alarm, event reporting, and audit trail:
(1) Alarm: In communication systems, any device that can sense an abnormal condition within the system and provide, either locally or remotely, a signal indicating the presence of the abnormality. (188) NOTE: The signal may be in any desired form ranging from a simple contact closure (or opening) to a time-phased automatic shutdown and restart cycle. (Glossary of INFOSEC and INFOSEC Related Terms—Idaho State University)
(2) Event reporting: Network message indicating operational irregularities in physical elements of a network or a response to the occurrence of a significant task, typically the completion of a request for information. (Glossary of INFOSEC and INFOSEC Related Terms—Idaho State University)
(3) Audit trail: Data collected and potentially used to facilitate a security audit. (ISO 7498–2, as cited in HISB, DRAFT GLOSSARY OF TERMS RELATED TO INFORMATION SECURITY IN HEALTH CARE INFORMATION SYSTEMS draft Glossary of Terms Related to Information Security in Health Care Information Systems)
Part of mechanisms to prevent unauthorized access to data that is transmitted over a communications network on the matrix.

Applications and data criticality analysis:
An entity's formal assessment of the sensitivity, vulnerabilities, and security of its programs and information it receives, manipulates, stores, and/or transmits.
Part of contingency plan on the matrix.

Assigned security responsibility:
Practices put in place by management to manage and supervise (1) the execution and use of security measures to protect data, and (2) the conduct of personnel in relation to the protection of data.
Part of Physical safeguards to guard data integrity, confidentiality, and availability on the matrix.

Assure supervision of maintenance personnel by authorized, knowledgeable person:
Documented formal procedures/instruction for the oversight of maintenance personnel when such personnel are in the vicinity of health information pertaining to an individual.
Part of personnel security on the matrix.

Asymmetric encryption:
Encryption and decryption performed using two different keys, one of which is referred to as the public key and one of which is referred to as the private key.
Also known as public-key encryption. (Stallings)

Asymmetric key:
One half of a key pair used in an asymmetric ("public-key") encryption system. Asymmetric encryption systems have two important properties: (1) the key used for encryption is different from the one used for decryption (2) neither key can feasibly be derived from the other. (CORBA Security Services, 1997)

Audit controls:
The mechanisms employed to record and examine system activity.
Part of technical security services to control and monitor access to information on the matrix.

Authorization control:
The mechanism for obtaining consent for the use and disclosure of health information.
Part of technical security services to control and monitor access to information on the matrix.

Automatic logoff:
After a pre-determined time of inactivity (for example, 15 minutes), an electronic session is terminated.
Part of entity authentication on the matrix.

Availability:
The property of being accessible and useable upon demand by an authorized entity. (ISO 7498–2, as cited in the HISB draft Glossary of Terms Related to Information Security In Health care Information Systems)

Awareness training for all personnel (including management):
All personnel in an organization should undergo security awareness training, including, but not limited to, password maintenance, incident reporting, and an education concerning viruses and other forms of malicious software.
Part of Training on the matrix.

Biometric:.
A biometric identification system identifies a human from a measurement of a physical feature or repeatable action of the individual (for example, hand geometry, retinal scan, iris scan, fingerprint patterns, facial characteristics, DNA sequence characteristics, voice prints, and hand written signature). (ASTM E1762—95, as cited in the HISB draft Glossary of Terms Related to Information Security In Health care Information Systems)
Part of entity authentication on the matrix.

Certification:
The technical evaluation performed as part of, and in support of, the accreditation process that establishes the extent to which a particular computer system or network design and implementation meet a pre-specified set of security requirements. This evaluation may be performed internally or by an external accrediting agency.
Part of administrative procedures to guard data integrity, confidentiality, and availability.

Chain of Trust Partner Agreement:
Contract entered into by two business partners in which it is agreed to exchange data and that the first party will transmit information to the second party, where the data transmitted is agreed to be protected between the partners. The sender and receiver depend upon each other to maintain the integrity and confidentiality of the transmitted information. Multiple such two-party contracts may be involved in moving information from the originator to the ultimate recipient, for example, a provider may contract with a clearing house to transmit claims to the clearing house; the clearing house, in turn, may contract with another clearing house or with a payer for the further transmittal of those same claims.
Part of administrative procedures to guard data integrity, confidentiality and availability on the matrix..

Classification:
Protection of data from unauthorized access by the designation of multiple levels of access authorization clearances to be required for access, dependent upon the sensitivity of the information.
A type of access control on the matrix.

Clearing House:
* * * a public or private entity that processes or facilitates the processing of nonstandard data elements of health information into standard data elements. (HIPAA, Subtitle F, Section 262(a) Section 1171(2))

Combination locks changed:
Documented procedure for changing combinations of locking mechanisms, both on a recurring basis and when personnel knowledgeable of combinations no longer have a need to know or a requirement for access to the protected facility/system.
Part of termination procedures on the matrix.

Confidentiality:
The property that information is not made available or disclosed to unauthorized individuals, entities or processes. (ISO 7498–2, as cited in the HISB draft Glossary of Terms Related to Information Security In Health care Information Systems) .

Context-based access:
An access control based on the context of a transaction (as opposed to being based on attributes of the initiator or target). The "external" factors might include time of day, location of the user, strength of user authentication, etc.
Part of access control on the matrix.

Contingency Plan:
A plan for responding to a system emergency. The plan includes performing backups, preparing critical facilities that can be used to facilitate continuity of operations in the event of an emergency, and recovering from a disaster. (O'Reilly, 1992, as cited in the HISB draft Glossary of Terms Related to Information Security In Health care Information Systems) Contingency plans should be updated routinely.
Part of Administrative procedures to guard data integrity, confidentiality and availability on the matrix.

Continuity of signature capability:
The public verification of a signature shall not compromise the ability of the signer to apply additional secure signatures at a later date. (ASTM E 1762—95)

Part of digital signature on the matrix.

Counter signatures:
It shall be possible to prove the order of application of signatures. This is analogous to the normal business practice of countersignatures, where some party signs a document which has already been signed by another party. (ASTM E 1762 -95)
Part of digital signature on the matrix.

Data:
A sequence of symbols to which meaning may be assigned. (NRC, 1991, as cited in the HISB draft Glossary of Terms Related to Information Security In Health care Information Systems)

Data authentication:
The corroboration that data has not been altered or destroyed in an unauthorized manner. Examples of how data corroboration may be assured include the use of a check sum, double keying, a message authentication code, or digital signature.
Part of technical security services to control and monitor access to information on the matrix

Data backup:
A retrievable, exact copy of information.
Part of media controls on the matrix.

Data backup plan:
A documented and routinely updated plan to create and maintain, for a specific period of time, retrievable exact copies of information.
Part of contingency plans on the matrix.

Data Integrity:
The property that dat has [sic] not been altered or destroyed in an unauthorized manner. (ASTM E1762–95).

Data storage:
The retention of health care information pertaining to an individual in an electronic format.
Part of media controls on the matrix.

Digital signature:
An electronic signature based upon cryptographic methods of originator authentication, computed by using a set of rules and a set of parameters such that the identity of the signer and the integrity of the data can be verified. (FDA Electronic Record; Electronic Signatures; Final Rule)
Part of electronic signature on the matrix.

Disaster recovery:
The process whereby an enterprise would restore any loss of data in the event of fire, vandalism, natural disaster, or system failure. (CPRI, 1996c, as cited in HISB, DRAFT GLOSSARY OF TERMS RELATED TO INFORMATION SECURITY IN HEALTH CARE INFORMATION SYSTEMS draft Glossary of Terms Related to Information Security in Health Care Information Systems)
Part of physical access controls (limited access) on the matrix.

Disaster recovery plan:
Part of an overall contingency plan. The plan for a process whereby an enterprise would restore any loss of data in the event of fire, vandalism, natural disaster, or system failure. (CPRI, 1996c, as cited in HISB, DRAFT GLOSSARY OF TERMS RELATED TO INFORMATION SECURITY IN HEALTH CARE INFORMATION SYSTEMS draft Glossary of Terms Related to Information Security in Health Care Information Systems)
Part of contingency plan on the matrix.

Discretionary access control:
Discretionary Access Control (DAC) is used to control access by restricting a subject's access to an object. It is generally used to limit a user's access to a file. In this type of access control it is the owner of the file who controls other users' accesses to the file.
A type of access control on the matrix.

Disposal:
The final disposition of electronic data, and/or the hardware on which electronic data is stored.
Part of media controls on the matrix.

Documentation:
Written security plans, rules, procedures, and instructions concerning all components of an entity's security.
Part of security configuration mgmt on the matrix.

Electronic data interchange (EDI):
Intercompany, computer-to-computer transmission of business information in a standard format. For EDI purists, "computer-to-computer" means direct transmission from the originating application program to the receiving, or processing, application program, and an EDI transmission consists only of business data, not any accompanying verbiage or free-form messages. Purists might also contend that a standard format is one that is approved by a national or international standards organization, as opposed to formats developed by industry groups or companies. (EDI Security, Control, and Audit)

Electronic signature:
The attribute that is affixed to an electronic document to bind it to a particular entity. An electronic signature process secures the user authentication (proof of claimed identity, such as by biometrics (fingerprints, retinal scans, hand written signature verification, etc.), tokens or passwords) at the time the signature is generated; creates the logical manifestation of signature (including the possibility for multiple parties to sign a document and have the order of application recognized and proven) and supplies additional information such as time stamp and signature purpose specific to that user; and ensures the integrity of the signed document to enable transportability, interoperability, independent verifiability, and continuity of signature capability. Verifying a signature on a document verifies the integrity of the document and associated attributes and verifies the identity of the signer. There are several technologies available for user authentication, including passwords, cryptography, and biometrics. (ASTM 1762–95, as cited in the HISB draft Glossary of Terms Related to Information Security In Health care Information Systems)

Emergency mode operation:
Access controls in place that enable an enterprise to continue to operate in the event of fire, vandalism, natural disaster, or system failure.
Part of physical access controls (limited access) on the matrix.

Emergency mode operation plan:
Part of an overall contingency plan. The plan for a process whereby an enterprise would be able to continue to operate in the event of fire, vandalism, natural disaster, or system failure.
Part of contingency plan on the matrix.

Encryption:
Transforming confidential plaintext into ciphertext to protect it. Also called encipherment. An encryption algorithm combines plaintext with other values called keys, or ciphers, so the data becomes unintelligible. Once encrypted, data can be stored or transmitted over unsecured lines. (EDI Security, Control, and Audit)
Decrypting data reverses the encryption algorithm process and makes the plaintext available for further processing.
Part of access control on the matrix.

Entity authentication:
1. The corroboration that an entity is the one claimed. (ISO 7498–2, as cited in the HISB draft Glossary of Terms Related to Information Security In Health care Information Systems)
Part of technical security services to control and monitor access to information on the matrix.
2. A communications/network mechanism to irrefutably identify authorized users, programs, and processes, and to deny access to unauthorized users, programs and processes.
Part of mechanisms to prevent unauthorized access to data that is transmitted over a communications network on the matrix.

Equipment control (into and out of site):
Documented security procedures for bringing hardware and software into and out of a facility and for maintaining a record of that equipment. This includes, but is not limited to, the marking, handling, and disposal of hardware and storage media.
Part of physical access controls (limited access) on the matrix.

Facility security plan:
A plan to safeguard the premises and building(s) (exterior and interior) from unauthorized physical access, and to safeguard the equipment therein from unauthorized physical access, tampering, and theft.
Part of physical access controls (limited access) on the matrix.

Formal mechanism for processing records:
Documented policies and procedures for the routine, and non-routine, receipt, manipulation, storage, dissemination, transmission, and/or disposal of health information.

Part of administrative procedures to guard data integrity, confidentiality, and availability on the matrix.

Hardware/software installation & maintenance review and testing for security features:
Formal, documented procedures for (1) connecting and loading new equipment and programs, (2) periodic review of the maintenance occurring on that equipment and programs, and (3) periodic security testing of the security attributes of that hardware/software.
Part of security configuration mgmt on the matrix.

Independent verifiability:
The capability to verify the signature without the cooperation of the signer. Technically, it is accomplished using the public key of the signatory, and it is a property of all digital signatures performed with asymmetric key encryption
Part of digital signature on the matrix.

Information:
Data to which meaning is assigned, according to context and assumed conventions. (National Security Council, 1991, as cited in the HISB draft Glossary of Terms Related to Information Security In Health care Information Systems)

Information access control:
Formal, documented policies and procedures for granting different levels of access to health care information.
Part of administrative procedures to ensure integrity and confidentiality on the matrix.

Integrity controls:
Security mechanism employed to ensure the validity of the information being electronically transmitted or stored.
Part of mechanisms to prevent unauthorized access to data that is transmitted over a communications network on the matrix.

Internal audit:
The in-house review of the records of system activity (for example, logins, file accesses, security incidents) maintained by an organization.
Part of administrative procedures to guard data integrity, confidentiality, and availability on the matrix.

Interoperability:
The applications used on either side of a communication, between trading partners and/or between internal components of an entity, being able to read and correctly interpret the information communicated from one to the other.
Part of digital signature on the matrix.

Inventory:
Formal, documented identification of hardware and software assets.
Part of security configuration mgmt on the matrix.

Key:
An input that controls the transformation of data by an encryption algorithm (NRC, 1991, as cited in the HISB draft Glossary of Terms Related to Information Security In Health care Information Systems)

Maintenance of record of access authorizations:
Ongoing documentation and review of the levels of access granted to a user, program, or procedure accessing health information.
Part of personnel security on the matrix.

Maintenance records:
Documentation of repairs and modifications to the physical components of a facility, for example, hardware, software, walls, doors, locks.
Part of physical access controls (limited access) on the matrix.

Mandatory Access Control (MAC):
A means of restricting access to objects that is based on fixed security attributes assigned to users and to files and other objects. The controls are mandatory in the sense that they cannot be modified by users or their programs. (Stallings, 1995) (as cited in the HISB draft Glossary of Terms Related to Information Security In Health care Information Systems)
A type of access control on the matrix.

Media controls:
Formal, documented policies and procedures that govern the receipt and removal of hardware/software (for example, diskettes, tapes) into and out of a facility.
Part of physical safeguards to guard data integrity, confidentiality, and availability on the matrix.

Message:
A digital representation of information. (ABA Digital Signatures Guidelines)

Message authentication:
Ensuring, typically with a message authentication code, that a message received (usually via a network) matches the message sent. (O'Reilly, 1992, as cited in the HISB draft Glossary of Terms Related to Information Security In Health care Information Systems)
Part of mechanisms to prevent unauthorized access to data that is transmitted over a communications network on the matrix

Message authentication code:
Data associated with an authenticated message that allows a receiver to verify the integrity of the message. (Glossary of INFOSEC and INFOSEC Related Terms—Idaho State University)

Message integrity:
The assurance of unaltered transmission and receipt of a message from the sender to the intended recipient. (ABA Digital Signature Guidelines)
Part of digital signature on the matrix.

Multiple signatures:
It shall be possible for multiple parties to sign a document. Multiple signatures are conceptually, simply appended to the document. (ASTM E 1762–95)
Part of digital signature on the matrix.

Need-to-know procedures for personnel access:
A security principle stating that a user should have access only to the data he or she needs to perform a particular function. (O'Reilly, 1992, as cited in the HISB draft Glossary of Terms Related to Information Security In Health care Information Systems)
Part of physical access controls (limited access) on the matrix.

Nonrepudiation:
Strong and substantial evidence of the identity of the signer of a *message* and of message integrity, sufficient to prevent a party from successfully denying the origin, submission or delivery of the message and the integrity of its contents. (ABA Digital Signature Guidelines)
Part of digital signature on the matrix.

Operating, and in some cases, maintenance personnel have proper access authorizations:
Formal, documented policies and procedures to be followed in determining the access level to be granted to individuals working on, or in the vicinity of, health information.
Part of personnel security on the matrix.

Password:
Confidential authentication information composed of a string of characters. (ISO 7498—2, as cited in the HISB draft Glossary of Terms Related to Information Security In Health care Information Systems)
Part of entity authentication on the matrix.

Periodic security reminders:
Employees, agents and contractors should be made aware of security concerns on an ongoing basis.
Part of training on the matrix.

Personnel clearance procedure:
A protective measure applied to determine that an individual's access to sensitive unclassified automated information is admissible. The need for and extent of a screening process is normally based on an assessment of risk, cost, benefit, and feasibility as well as other protective measures in place. Effective screening processes are applied in such a way as to allow a range of implementation, from minimal procedures to more stringent procedures commensurate with the sensitivity of the data to be accessed and the magnitude of harm or loss that could be caused by the individual (DOE 1360.2A, as cited in Glossary of INFOSEC and INFOSEC Related Terms—Idaho State University)
Part of personnel security on the matrix.

Personnel security:
The procedures established to ensure that all personnel who have access to sensitive information have the required authority as well as appropriate clearances. (NCSC Glossary of Computer Security Terms, October 21, 1988)
Part of administrative procedures to guard data integrity, confidentiality and availability on the matrix.

Personnel security policy/procedure:
Formal, documentation of policies and procedures established to ensure that all personnel who have access to sensitive information have the required authority as well as appropriate clearances. (Glossary of INFOSEC and INFOSEC Related Terms—Idaho State University)
Part of personnel security on the matrix.

Physical access controls (limited access):
Those formal, documented policies and procedures to be followed to limit

physical access to an entity while ensuring that properly authorized access is allowed.
Part of Physical safeguards to guard data integrity, confidentiality, and availability on the matrix.

Physical safeguards:
Protection of physical computer systems and related buildings and equipment from fire and other natural and environmental hazards, as well as from intrusion. Also covers the use of locks, keys, and administrative measures used to control access to computer systems and facilities. (O'Reilly, 1992, as cited in HISB, draft Glossary of Terms Related to Information Security in Health Care Information Systems)
A section of the matrix covering physical security requirements.

PIN (Personal Identification Number):
A number or code assigned to an individual and used to provide verification of identity.
Part of entity authentication on the matrix.

Policy/guideline on work station use:
Documented instructions/procedures delineating the proper functions to be performed, the manner in which those functions are to be performed, and the physical attributes of the surroundings, of a specific computer terminal site or type of site, dependant upon the sensitivity of the information accessed from that site.
Part of Physical safeguards to guard data integrity, confidentiality, and availability on the matrix.

Procedure for emergency access:
Documented instructions for obtaining necessary information during a crisis.
Part of access control on the matrix.

Procedures for verifying access authorizations prior to physical access:
Formal, documented policies and instructions for validating the access privileges of an entity prior to granting those privileges.
Part of physical access controls (limited access) on the matrix.

Provider:
A supplier of services as defined in section 1861(u) of the HIPAA.
A supplier of medical or other services as defined in section 1861(s) of the HIPAA.

Public key:
One of the two keys used in an asymmetric encryption system. The public key is made public, to be used in conjunction with a corresponding private key. [Stallings, 1995]

Removal from access lists:
The physical eradication of an entity's access privileges.
Part of termination procedures on the matrix.

Removal of user account(s):
The termination or deletion of an individual's access privileges to the information, services, and resources for which they currently have clearance, authorization, and need-to-know when such clearance, authorization and need-to-know no longer exists.
Part of termination procedures on the matrix.

Report procedures:
The documented formal mechanism employed to document security incidents.
Part of security incident procedures on the matrix.

Response procedures:
The documented formal rules/instructions for actions to be taken as a result of the receipt of a security incident report.
Part of security incident procedures on the matrix.

Risk analysis:
Risk analysis, a process whereby cost-effective security/control measures may be selected by balancing the costs of various security/control measures against the losses that would be expected if these measures were not in place.
Part of the security management process on the matrix.

Risk management:
Risk is the possibility of something adverse happening. Risk management is the process of assessing risk, taking steps to reduce risk to an acceptable level and maintaining that level of risk. (NIST Pub. 800–14)
Part of the security management process on the matrix.

Role-based access control:
Role-based access control (RBAC) is an alternative to traditional access control models (e.g., discretionary or non-discretionary access control policies) that permits the specification and enforcement of enterprise-specific security policies in a way that maps more naturally to an organization's structure and business activities. With RBAC, rather than attempting to map an organization's security policy to a relatively low-level set of technical controls (typically, access control lists), each user is assigned to one or more predefined roles, each of which has been assigned the various privileges needed to perform that role.
Part of access control on the matrix.
Part of authorization control on the matrix.

Sanction policy:
Organizations must have policies and procedures regarding disciplinary actions which are communicated to all employees, agents and contractors, for example, verbal warning, notice of disciplinary action placed in personnel files, removal of system privileges, termination of employment and contract penalties (ASTM E 1869)
In addition to enterprise sanctions, employees, agents, and contractors must be advised of civil or criminal penalties for misuse or misappropriation of health information. Employees, agents and contractors, must be made aware that violations may result in notification to law enforcement officials and regulatory, accreditation and licensure organizations. (ASTM)
Part of the security management process on the matrix.

Secure work station location:
Physical safeguards to eliminate or minimize the possibility of unauthorized access to information, for example, locating a terminal used to access sensitive information in a locked room and restricting access to that room to authorized personnel, not placing a terminal used to access patient information in any area of a doctor's office where the screen contents can be viewed from the reception area.
Part of physical safeguards to guard data integrity, confidentiality, and availability on the matrix.

Security:
Security encompasses all of the safeguards in an information system, including hardware, software, personnel policies, information practice policies, disaster preparedness, and the oversight of all these areas. The purpose of security is to protect both the system and the information it contains from unauthorized access from without and from misuse from within.
Through various security measures, a health information system can shield confidential information from unauthorized access, disclosure and misuse, thus protecting privacy of the individuals who are the subjects of the stored data. (Privacy and Health Information Systems: A Guide to Protecting Patient Confidentiality)

Security awareness training:
All employees, agents, and contractors must participate in information security awareness training programs. Based on job responsibilities, individuals may be required to attend customized education programs that focus on issues regarding use of health information and responsibilities regarding confidentiality and security. (ASTM)
Part of Physical safeguards to guard data integrity, confidentiality, and availability on the matrix.

Security configuration management:
Measures, practices and procedures for the security of information systems should be coordinated and integrated with each other and other measures, practices and procedures of the organization so as to create a coherent system of security. (OECD Guidelines, as cited in NIST Pub 800–14)
Part of administrative procedures to guard data integrity, confidentiality, and availability on the matrix.

Security incident procedures:
Formal, documented instructions for reporting security breaches.
Part of administrative procedures to guard data integrity, confidentiality and availability on the matrix.

Security management process:
A security management process encompasses the creation, administration and oversight of policies to ensure the prevention, detection, containment, and correction of security breaches. It involves risk analysis and risk management, including the establishment of accountability, management controls (policies and education), electronic controls, physical security, and penalties for the abuse and misuse of its assets, both physical and electronic.

Part of administrative procedures to guard data integrity, confidentiality and availability on the matrix.

Security policy:
The framework within which an organization establishes needed levels of information security to achieve the desired confidentiality goals. A policy is a statement of information values, protection responsibilities, and organization commitment for a system. (OTA, 1993) The American Health Information Management Association recommends that security policies apply to all employees, medical staff members, volunteers, students, faculty, independent contractors, and agents. (AHIMA, 1996c) (as cited in HISB, DRAFT GLOSSARY OF TERMS RELATED TO INFORMATION SECURITY IN HEALTH CARE INFORMATION SYSTEMS draft Glossary of Terms Related to Information Security in Health Care Information Systems)
Part of the security management process on the matrix

Security testing:
A process used to determine that the security features of a system are implemented as designed and that they are adequate for a proposed applications environment. This process includes hands-on functional testing, penetration testing, and verification. (Glossary of INFOSEC and INFOSEC Related Terms—Idaho State University)
Part of security configuration mgmt on the matrix.

Sign-in for visitors and escort, if appropriate:
Formal, documented procedure governing the reception and hosting of visitors.
Part of physical access controls (limited access) on the matrix.

Subject/object separation:
Access to a subject does not guarantee access to the objects associated with that subject.
Subject is defined as an active entity, generally in the form of a person, process, or device that causes information to flow among objects or changes the system state. Technically, a process/domain pair. (Glossary of INFOSEC and INFOSEC Related Terms—Idaho State University)
Object is defined as a passive entity that contains or receives information. Access to an object potentially implies access to the information it contains. Examples of objects are: records blocks, pages, segments, files, directories, directory trees, and programs, as well as bits, bytes, words, fields, processors, video displays, keyboards, clocks, printers, network nodes, etc. (Glossary of INFOSEC and INFOSEC Related Terms—Idaho State University)
A type of access control.

System users, including maintenance personnel, trained in security:
See Awareness training (including management).
Part of personnel security on the matrix.

Technical security mechanisms:
The processes that are put in place to guard against unauthorized access to data that is transmitted over a communications network.
A section of the matrix.

Technical security services:
The processes that are put in place (1) to protect information and (2) to control and monitor individual access to information.
A section of the matrix.

Telephone callback:
A method of authenticating the identity of the receiver and sender of information through a series of "questions" and "answers" sent back and forth establishing the identity of each. For example, when the communicating systems exchange a series of identification codes as part of the initiation of a session to exchange information, or when a host computer disconnects the initial session before the authentication is complete, and the host calls the user back to establish a session at a predetermined telephone number.
Part of Entity authentication on the matrix.

Termination procedures:
Formal, documented instructions, which include appropriate security measures, for the ending of an employee's employment, or an internal/external user's access.
Part of administrative procedures to guard data integrity, confidentiality and availability on the matrix.

Testing and revision:
(1) Testing and revision of contingency plans refers to the documented process of periodic testing to discover weaknesses in such plans and the subsequent process of revising the documentation if necessary.
Part of contingency plan on the matrix.
(2) Testing and revision of programs should be restricted to formally authorized personnel.
Part of physical access controls (limited access) on the matrix.

Time-of-day:
Access to data is restricted to certain time frames, e.g., Monday through Friday, 8:00 a.m. to 6:00 p.m.
A type of access control on the matrix.

Time-stamp:
To create a notation that indicates, at least, the correct date and time of an action, and the identity of the person that created the notation.

Token:
A physical item that's used to provide identity. Typically an electronic device that can be inserted in a door or a computer system to obtain access. (O'Reilly, 1992) (as cited in HISB, DRAFT GLOSSARY OF TERMS RELATED TO INFORMATION SECURITY IN HEALTH CARE INFORMATION SYSTEMS draft Glossary of Terms Related to Information Security in Health Care Information Systems)
Part of entity authentication on the matrix

Training:
Education concerning the vulnerabilities of the health information in an entity's possession and ways to ensure the protection of that information.
Part of administrative procedures to guard data integrity, confidentiality and availability on the matrix.

Transportability:
A signed document can be transported (over an insecure network) to another system, while maintaining the integrity of the document.
Part of digital signature on the matrix.

Turn in keys, token or cards that allow access:
Formal, documented procedure to ensure all physical items that allow a terminated employee to access a property, building, or equipment are retrieved from that employee, preferably prior to termination.
Part of termination procedures on the matrix.

Unique user identification:
The combination name/number assigned and maintained in security procedures for identifying and tracking individual user identity. (ASTM)
Part of Entity authentication on the matrix.

User authentication:
The provision of assurance of the claimed identity of an entity. (ASTM E1762–5)
Part of digital signature on the matrix.

User-based access:
A security mechanism used to grant users of a system access based upon the identity of the user.
Part of access control on the matrix.
Part of authorization control on the matrix.

User education in importance of monitoring log in success/failure, and how to report discrepancies:
Training in the user's responsibility to ensure the security of health care information.
Part of training on the matrix.

User education concerning virus protection:
Training relative to user awareness of the potential harm that can be caused by a virus, how to prevent the introduction of a virus to a computer system, and what to do if a virus is detected.
Part of training on the matrix.

User education in password management:
A type of user training in the rules to be followed in creating and changing passwords and the need to keep them confidential.
Part of training on the matrix.

Virus checking:
A computer program that identifies and disables:
(1) another "virus" computer program, typically hidden, that attaches itself to other programs and has the ability to replicate. (Unchecked virus programs result in undesired side effects generally unanticipated by the user.)
(2) A type of programmed threat. A code fragment (not an independent program) that reproduces by attaching to another program. It may damage data directly, or it may degrade system performance by taking over system resources which are then not available to authorized users. (O'Reilly, 1992, as cited in HISB, DRAFT GLOSSARY OF TERMS RELATED TO INFORMATION SECURITY IN HEALTH CARE INFORMATION SYSTEMS draft Glossary of Terms Related to Information

Security in Health Care Information Systems)

(3) Code embedded within a program that causes a copy of itself to be inserted in one or more other programs. In addition to propagation, the virus usually performs some unwanted function. (Stallings, 1995, as cited in HISB, DRAFT GLOSSARY OF TERMS RELATED TO INFORMATION SECURITY IN HEALTH CARE INFORMATION SYSTEMS draft Glossary of Terms Related to Information Security in Health Care Information Systems)

Part of security configuration mgmt on the matrix.

Acronyms

ABA American Bar Association
ADA American Dental Association
ANSI American National Standards Institute
AHIMA American Health Information Management Association
ASTM American Society for Testing and Materials
CDT Center for Democracy & Technology
CEN Central European Nations
CORBA Common Object Request Broker
CPRI Computer-based Patient Record Institute
DAC Discretionary Access Control
DEA Data Encryption Algorithm
EDI Electronic Data Interchange
EHNAC Electronic Healthcare Network Accreditation Commission
FDA Food and Drug Administration
HISB Health Care Informatics Standards Board
ISO International Organization for Standardization
MAC Mandatory Access Control
NCSC National Computer Security Center
NCQA National Council for Quality Assurance
NCVHS National Committee on Vital and Health Statistics
NUBC National Uniform Billing Committee
NUCC National Uniform Claim Committee
PGP Pretty Good Privacy
PIN Personal Identification Number
NIST National Institutes of Standards and Technology
SDO Standards Development Organization
WEDI Workgroup for Electronic Data Interchange

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Privacy and Health Information Systems: A Guide to Protecting Patient Confidentiality, Goldman, Janlori & Mulligan, Deirdre, CDT, 1996.

Addendum 3

HIPAA SECURITY MATRIX—mapping

Please Note: While we have attempted to categorize security requirements for ease of understanding and reading clarity, there are overlapping areas on the matrix in which the same requirements are restated in a slightly different context.

ADMINISTRATIVE PROCEDURES TO GUARD DATA INTEGRITY, CONFIDENTIALITY, AND AVAILABILITY

Requirement	Implementation	Mapped standards
Certification		47.
Chain of trust partner agreement		12, 47.
Contingency plan (all listed implementation features must be implemented).	Applications and data criticality analysis	17, 47, 53.
	Data backup plan	12, 17, 47.
	Disaster recovery plan	12, 17, 47, 53.
	Emergency mode operation plan	47, 53.
	Testing and revision	12, 17, 47.
Formal mechanism for processing records		12, 17.
Information access control (all listed implementation features must be implemented).	Access authorization	12, 17, 47, 53.
	Access establishment	17, 47, 53.
	Access modification	12, 17, 47, 53.
Internal audit		12, 17, 43, 44, 47.
Personnel security (all listed implementation features must be implemented)	Assure supervision of maintenance personnel by authorized, knowledgeable person.	17, 47.
	Maintainance of record of access authorizations.	12, 17, 47.
	Operating, and in some cases, maintenance personnel have proper access authorization.	17, 47.
	Personnel clearance procedure	17, 47.
	Personnel security policy/procedure	17, 47, 53.
	System users, including maintenance personnel, trained in security.	12, 17, 47, 53.
Security configuration mgmt. (all listed implementation features must be implemented).	Documentation	12, 17, 47, 53.
	Hardware/software installation & maintenance review and testing for security features.	12, 17, 47.
	Inventory	12, 17.
	Security testing	12, 17, 47.
	Virus checking	12, 17, 47, 53.
Security incident procedures (all listed implementation features must be implemented).	Report procedures	12, 17, 47.
	Response procedures	17, 47.

ADMINISTRATIVE PROCEDURES TO GUARD DATA INTEGRITY, CONFIDENTIALITY, AND AVAILABILITY—Continued

Requirement	Implementation	Mapped standards
Security management process (all listed implementation features must be implemented).	Risk analysis	12, 17, 47, 53.
	Risk management	17, 47.
	Sanction policy	12, 17, 47, 53.
	Security policy	17, 47, 53.
Termination procedures (all listed implementation features must be implemented).	Combination locks changed	12, 17.
	Removal from access lists	12, 17, 47, 53.
	Removal of user account(s)	12, 17, 47.
	Turn in keys, token or cards that allow access	12, 17, 47.
Training (all listed implementation features must be implemented).	Awareness training for all personnel (including mgmt).	12, 17, 18, 47, 53.
	Periodic security reminders	12, 18.
	User education concerning virus protection	
	User education in importance of monitoring log in success/failure, and how to report discrepancies.	12, 17, 18.
	User education in password management	12, 18, 47

PHYSICAL SAFEGUARDS TO GUARD DATA INTEGRITY, CONFIDENTIALITY, AND AVAILABILITY

Requirement	Implementation	Mapped standards
Assigned security responsibility		47.
Media controls (all listed implementation features must be implemented).	Access control	17, 47, 53.
	Accountability (tracking mechanism)	17, 18, 47.
	Data backup	12, 17, 47, 53.
	Data storage	12, 17, 47.
	Disposal	17, 47, 53.
Physical access controls (limited access) (all listed implementation features must be implemented).	Disaster recovery	17.
	Emergency mode operation	17.
	Equipment control (into and out of site)	17, 47.
	Facility security plan	12, 17, 47.
	Procedures for verifying access authorizations prior to physical access.	17, 18, 47.
	Maintenance records	17
	Need-to-know procedures for personnel access.	12, 17, 47, 53
	Sign-in for visitors and escort, if appropriate	17
	Testing and revision	17, 47
Policy/guideline on work station use		18.
Secure work station location		17, 53.
Security awareness training		12, 17, 47.

TECHNICAL SECURITY SERVICES TO GUARD DATA INTEGRITY, CONFIDENTIALITY, AND AVAILABILITY

Requirement	Implementation	Mapped standards
Access control (The following implementation feature must be implemented: Procedure for emergency access, In addition, at least one of the following three implementation features must be implemented: Context-based access, Roll-based access, User-based access. The use of Encryption is optional).	Context-based access,	5, 12, 14, 16, 17, 40, 47.
	Encryption	1, 6, 12, 14, 17, 21, 22, 23, 24, 26, 36, 28, 29, 30, 31, 47, 49, 53, 54, 55.
	Procedure for emergency access	14, 17, 53.
	Roll-based access,	14, 16, 17, 40, 41, 47, 53.
	User-based access.	11, 12, 14, 16, 17, 40, 41, 47, 53.
Audit controls		12, 14, 18, 47, 53.
Authorization control (At least one of the listed implementation features must be implemented).	Role-based access	5, 14, 16, 17, 47, 53.
	User-based access	14, 16, 47, 53.
Data authentication		11, 53.
Entity Authentication (The following implementation features must be implemented: Automatic logoff, Unique user identification. In addition, at least one of the other listed implementation features must be implemented).	Automatic logoff	14, 16, 17, 18, 40, 53
	Biometric	14, 16, 18, 40, 47, 53.
	Password	14, 16, 17, 18, 19, 40, 47, 53.
	PIN	14, 16, 18, 19, 40, 47.
	Telephone callback	14, 17, 18, 47, 53.
	Token	14, 17, 47, 50, 53.
	Unique user identification	14, 47, 53.

TECHNICAL SECURITY MECHANISMS TO GUARD DATA INTEGRITY, CONFIDENTIALITY, AND AVAILABILITY

Requirement	Implementation	Mapped standards
Communications/network controls (If communications or networking is employed, the following implementation features must be implemented: Integrity controls, Message authentication. In addition, one of the following implementation features must be implemented: Access controls, Encryption. In addition, if using a network, the following four implementation features must be implemented: Alarm, Audit trail, Entity authentication, Event reporting).	Access controls	14, 17, 22, 23, 39, 47, 48, 53.
	Alarm, event reporting, and audit trail	14, 17, 18, 35, 36, 37, 38, 44.
	Audit trail	
	Encryption	1, 6, 12, 14, 17, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 47, 49, 52, 53.
	Entity authentication	12, 14, 17, 18, 20, 22, 23, 31, 32, 33, 34, 51, 53.
	Event reporting	
	Integrity controls	14, 15, 17, 18, 22, 23, 45, 46.
	Message authentication	14, 15, 17, 18, 22, 23, 25, 45, 46, 52.

ELECTRONIC SIGNATURE

Requirement	Implementation	Mapped standards
Digital signature (If digital signature is employed, the following three implementation features must be implemented: Message integrity, Non-repudiation, User authentication. Other implementation features are optional).	Ability to add attributes	3, 4, 10, 11, 13, 20
	Continuity of signature capability	3, 4, 11, 13, 14, 18
	Counter signatures	3, 4, 10, 11, 13, 14, 18
	Independent verifiability	3, 4, 11, 13, 20
	Interoperability	3, 4, 7, 8, 9, 13, 14, 48
	Message integrity	3, 4, 10, 11, 13, 14, 18
	Multiple signatures	3, 4, 10, 11, 13, 20
	Non-repudiation	2, 3, 4, 10, 11, 13, 14, 42
	Transportability	3, 4, 11, 13, 14, 18
	User authentication	3, 4, 10, 11, 13, 20

Mapped Standards

1. ANSI X3.92—Data Encryption Standard
2. ANSI X9.30—Part 1: Public Key Cryptography Using Irreversible Algorithms: Digital Signature Algorithm
3. ANSI X9.30—Part 2: Public Key Cryptography Using Irreversible Algorithms: Secure Hash Algorithm (SHA–1)
4. ANSI X9.31—Reversible Digital Signature Algorithms
5. ANSI X9.45—Enhanced Management Controls Using Digital Signatures and Attribute Certificates
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7. ANSI X9.55—Extensions to Public Key Certificates and CRLs
8. ANSI X9.57—Certificate Management
9. ANSI X9.62—Elliptic Curve Digital Signature Algorithm (draft)
10. ANSI X12.58—Security Structures (version 2)
11. ASTM E 1762—Standard Guide for Authentication of Healthcare Information
12. ASTM E 1869—Draft Standard for Confidentiality, Privacy, Access and Data Security Principles
13. ASTM PS 100–97—Standard Specification for Authentication of Healthcare Information Using Digital Signatures
14. ASTM PS 101–97—Security Framework for Healthcare Information
15. ASTM PS 102–97—Standard Guide for Internet and Intranet Security
16. ASTM PS 103–97 Authentication & Authorization Guideline
17. CEN—European Pre-Standard
18. FDA—Electronic Records—Electronic Signatures—Final Rule
19. FIPS PUB 112—Password Usage
20. FIPS PUB 196—Entity Authentication Using Public Key Cryptography
21. FIPS PUB 46–2—Data Encryption Standard
22. IEEE 802.10: Interoperable LAN/MAN Security (SILS), 1992–1996 (multiple parts)
23. IEEE 802.10c—LAN/WAN Security—Key Management
24. IETF ID—Combined SSL/PCT Transport Layer Security Protocol
25. IETF ID—FTP Authentication Using DSA
26. IETF ID—Secure HyperText TP Protocol (S–HTTP)
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29. IETF RFC 1422—Privacy Enhanced Mail: Part 1: Message Encryption and Authentication Procedures
30. IETF RFC 1424—Privacy Enhanced Mail: Part 2: Certificate-Based Key Management
31. IETF RFC 1423—Privacy Enhanced Mail: Part 3: Algorithms, Modes, and Identifiers
32. ISO/IEC 9798–1: Information Technology—Security Techniques—Entity Authentication Mechanisms—Part 1: General Model
33. ISO/IEC 9798–2: Information Technology—Security Techniques—Entity Authentication Mechanisms—Part 2: Entity Authentication Using Asymmetric Techniques
34. ISO/IEC 9798–2: Information Technology—Security Techniques—Entity Authentication Mechanisms—Part 2: Entity Authentication Using Symmetric Techniques
35. ISO/IEC 10164–4—Information Technology—Open Systems Connection—System Management: Alarm Reporting Function
36. ISO/IEC 10164–5—Information Technology—Open Systems Connection—System Management: Event Report Management Function
37. ISO/IEC 10164–7—Information Technology—Open Systems Connection—System Management: Security Alarm Reporting Function
38. ISO/IEC 10164–8—Information Technology—Open Systems Connection—System Management: Security Audit Trail Function
39. ISO/IEC 10164–9—Information Technology—Open Systems Connection—System Management: Objects and Attributes for Access Control
40. ISO/IEC 10181–2—Information Technology—Security Frameworks in Open Systems—Authentication Framework
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43. ISO/IEC 10181–5—Information Technology—Security Frameworks in Open Systems—Confidentiality Framework
44. ISO/IEC 10181–7—Information Technology—Security Frameworks in Open Systems—Security Audit Framework
45. ISO/IEC 10736—Information Technology—Telecommunications and Information Exchange Between Systems—Transport Layer Security Protocol (TLSP)

46. ISO/IEC 11577—Information Technology—Telecommunications and Information Exchange Between Systems—Network Layer Security Protocol (NLSP)
47. NIST—Generally Accepted Principles and Practices for Secure Information Technology Systems
48. NIST MISPC—Minimum Interoperability Specification for PKI Components Version 1
49. PKCS #7—Cryptographic Message Syntax Standard Version 1.5 or later
50. PKCS #11—Cryptoki B A Cryptographic Token Interface
51. RFC 1510—Kerberos Authentication Service
52. RFC 2104—HMAC:Keyed-Hashing for Message Authentication
53. For the Record—Protecting Electronic Health Information
54. ANSI X9.42—Management of Symmetric Keys Using Diffie-Hellman
55. ANSI X9.44—Key Transport Using RSA

[FR Doc. 98–21601 Filed 8–7–98; 1:23 pm]
BILLING CODE 4120–01–P

federal register

Wednesday
August 12, 1998

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29
Harmonization of Miscellaneous Rotorcraft Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. 28929; Amendment Nos. 27–35 & 29–42]

RIN 2120–AG23

Harmonization of Miscellaneous Rotorcraft Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is amending the airworthiness standards for normal and transport category rotorcraft. The changes amend the airworthiness standards to require a cockpit indication of autopilot operating mode to the pilots for certain autopilot configurations, to clarify the burn test requirements for electrical wiring for transport category rotorcraft, and to provide a new requirement for an electrical wire burn test for normal category rotorcraft. The rule also adds a 1.33 fitting factor structural strength requirement to the attachment of litters and berths.

EFFECTIVE DATE: September 11, 1998.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Regulations Group, Rotorcraft Directorate, Aircraft Certification Service, FAA, Worth, Texas 76193–0111, telephone number (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

Using a moderm and suitable communications software, an electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee (ARAC) Bulletin Board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm/htm or the **Federal Register** webpage at http://www.access.gpo.gov/su__docs/aces/aces 140.html for access to recently published rulemaking documents.

Any person may obtain a coy of this final 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 202–267–9680. Communications must identify the amendment number of docket number of this final rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking (NRPMs) and Final Rules should request from the above office a copy of Advisory Circular No. 11–2A, NPRM Distribution System, that describes the application procedure.

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.

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

These amendments are based on NPRM No. 97–8 published in the **Federal Register** on June 9, 1997 (62 FR 31475). That notice proposed to amend the airworthiness standards for both normal and transport category rotorcraft based on recommendations from the ARAC. By announcement in the **Federal Register** (60 FR 4221, January 20, 1995), the "Harmonization of Miscellaneous Rotorcraft Regulations Working Group" was chartered by the ARAC. The working group included representatives from the major rotorcraft manufacturers (normal and transport) and representatives from Aerospace Industries Association of America, Inc. (AIA), Association Europeene des Constructeurs de Material Aerospatial (AECMA), Helicopter Association International (HAI), Joint Aviation Authorities (JAA), and the Federal Aviation Administration (FAA) Rotorcraft Directorate. This broad participation is consistent with FAA policy to have all known interested parties involved as early as practicable in the rulemaking process.

On January 9, 1996, the Miscellaneous Harmonization Working Group submitted recommendations to the ARAC concerning the need (1) to provide a cockpit indication of autopilot operating mode to the pilots for certain autopilot configurations, (2) to clarify the burn test requirements for electrical wiring for transport category rotorcraft, (3) to provide a new requirement for an electrical wire burn test for normal category rotorcraft, and (4) to add a 1.33 fitting factor structural strength requirement to the attachment of litters and berths. The working group also submitted recommendations to ARAC concerning the disharmonizations introduced by the new Rotorcraft 30 Second/2 Minute One-Engine Inoperative Power Ratings (OEI) (59 FR 47764; September 16, 1994) and the Crash Resistant Fuel Systems (CRFS) in Normal and Transport Category Rotorcraft (59 FR 50380; October 3, 1994) final rules.

The ARAC reviewed the working group recommendations and subsequently recommended that the FAA revise the airworthiness standards for normal and transport category rotorcraft to incorporate the miscellaneous changes. The changes to 14 CFR parts 27 and 29 (parts 27 and 29) are harmonized with the European Joint Aviation Requirements (JAR) 27 and 29.

The FAA evaluated the ARAC recommendations and made its proposals in NPRM 97–8. The FAA received two comments to the proposed miscellaneous changes.

Discussion of Comments

Interested persons have been afforded an opportunity to participate in the making of these amendments. Due consideration was given to the comments received from the two commenters. One commenter representing HAI was fully supportive of the proposed changes.

Another commenter recommended changes to the proposed part 27 electrical wire burn test requirements. This commenter does not believe self-extinguishing wire is required for low amperage installation and requested the following wording be added to § 27.1365: "* * * To require self-extinguishing installation of electrical wire and cable larger than 18 gauge and carrying current draws of over 5 amps per wire. Multi-strand cable with over 4 strands in a closed cable sheave are exempt from this requirement * * *" The FAA does not agree to exempt multi-strand wires or 18 gauge wires or smaller. Any wire, regardless of size or number of strands, may constitute a fire hazard. Small gauge wires may be

routed in wire bundles with larger gauge wires. Any fire in the wire bundle would be fueled by nonself-extinguishing wire and thereby defeat the purpose of the rule.

After considering all of the comments, the FAA has determined that air safety and the public interest require adoption of the amendments are proposed.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. § 3507(d)), there are no requirements for information collection associated with this final use.

International Compatibility

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because there is not a comparable rule under International Civil Aviation Organization (ICAO) standards.

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 (RFA) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). In conducting these analyses, the FAA has determined that this rule: (1) will 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 as DOT's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will lessen restraints on international trade; and (5) does not contain a significant intergovernmental or private sector mandate. These analyses, available in the docket, are summarized below.

Economic Evaluation

The revisions will impose no incremental costs on the larger manufacturers that produce both part 27 and 29 rotorcraft. For smaller manufacturers producing only part 27 rotorcraft, there will be incremental costs totalling approximately $60,000 (nondiscounted 1997 dollars) per type certification. For some manufacturers of specialized equipment in part 27 rotorcraft, incremental cost could equal an additional $500 per rotorcraft. Overall, the changes will increase safety and promote harmonization between FAA and JAA regulations. Harmonization will eliminate unnecessary duplication of certification requirements (e.g., testing/design), thus reducing manufacturers' costs.

The costs and benefits of the changes regarding the fitting factor for berths and litters, removal of the phrase "unless a rollover is shown to be extremely remote" (in §§ 27.975(b) and 29.975(a)(7)), autopilot operating mode, and burn test for electrical wire in normal category rotorcraft are summarized below. All other revisions involve minor clarifications or administrative changes.

The fitting factor requirement will not impose incremental costs on most rotorcraft manufacturers. One small manufacturer of part 27 rotorcraft indicated additional nonrecurring testing and analysis costs of $2,100 to substantiate the 1.33 factor in an initial new type certification; most likely, this additional cost will not be incurred in subsequent type certification. Although there have been no identifiable accidents involving litters attributable to insufficient attachment strength, even one minor injury will far exceed the relatively low costs. Codification of the 1.33 fitting factor, which is inherent in most current designs, will ensure that all future designs include this standard, increasing the minimum level of safety.

There will be no incremental costs or benefits associated with removal of the phrase "unless a rollover is shown to be extremely remote" in §§ 27.975(b) and 29.975(a)(7) since rotorcraft currently meet the minimum fuel spillage requirements of these sections.

The autopilot display requirement will not impose any incremental costs on rotorcraft manufacturers since new autopilot systems employed in rotorcraft are identical to those in airplanes and the mode indicator in now integral to such system. Codification of this requirement will ensure that all future rotorcraft designs comply with this standard.

Most U.S. and European manufacturers currently use electrical wire that meets the burn test requirements for transport category rotorcraft since they produce both parts 27 and 29 rotocraft. However, the few manufacturers that produce normal category rotorcraft only will likely experience additional costs. One manufacturer estimates additional nonrecurring testing/design costs at $5,300 per type certification and additional wiring costs of $530 per rotorcraft. At an estimated production of seven rotorcraft per year, the incremental recurring costs will total $3,710 per year for ten years, or $37,100 total (nondiscounted 1997 dollars), under one type certification. Another manufacturer estimates additional wiring costs of $370 per rotorcraft and no additional nonrecurring costs. At an estimated production of 20 rotorcraft per year, the incremental recurring costs will total $7,400 per year ten years, or $74,000 total (nondiscounted 1997 dollars), under one type certification. Averaging the incremental costs for these two manufacturers results in an estimate of approximately $58,200 per type certification (135 units produced at approximately $430 per unit).

Part 27 rotorcraft which will be used in specialized operations may require somewhat more expensive wiring to meet the new burn test requirements. The second commenter to the notice alluded to earlier (a manufacturer of fire-fighting systems) indicates that meeting the new standards will result in a 5 percent increase in the selling price of its system, or $900 per unit. A manufacturer of agricultural spraying systems, however, indicates increased per system costs of only a fraction of one percent, equating to $100 per unit. Since both of these systems represent the type of add-on electrical system potentially affected by the wiring provision, using the average of the two estimates, or $500, is appropriate. Assuming 20 of the new production rotorcraft (about 15%) will be equipped with the add-on systems, the additional incremental costs total $10,000.

Examination of National Transportation Safety Board accident data for the period 1983 through 1995 indicates several rotorcraft accidents and incidents in which the electrical system was cited as a cause or contribute factor. One accident (in June 1994) was primarily caused by an electrical short in the wiring which burned a hole in the main fuel line, causing a post-impact fire that destroyed the part 27 helicopter. The FAA believes that the revised burn test requirements could have prevented this accident. If

the rule prevents one such accident during the operating lives (25-years) of rotorcraft produced under one part 27 type certification, the rule will be cost-beneficial: Replacement costs of a substantially-damaged rotorcraft equals $125,000 (this benefit alone will exceed the total costs of approximately $70,000); adding cumulative damage from two or three minor incidents (say $20,000 to $30,000) and potential harmonization cost savings ($50,000, based on estimates from previous harmonized rotorcraft rules) increases the benefits to approximately $200,000, which is almost three times the costs. If one serious injury (valued at over $500,000) is prevented, the benefits of the rule would be several times the estimated costs.

In addition, codification of those requirements complied with indirectly (i.e., as a result of complying with other provisions) or "voluntarily" (by virture of competitive pressures) will ensure continuation of enhanced safety levels in future rotorcraft designs.

Based on the findings of no significant incremental costs coupled with the benefits of harmonization savings and higher levels of safety, the FAA has determined that the rule will be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

For manufacturers, a small entity is one with 1,500 or fewer employees. Only five rotorcraft have 1,500 or fewer employees and therefore qualify as small entities. However, three of these are not currently producing new type-certificated rotocraft, and another does not compete with the larger manufacturers. Consequently, only one producer could potentially be impacted by this rule. However the annualized increased certification costs for a rotorcraft manufacturer (based on the average incremental costs of the wiring requirements as reported by the two manufacturers, added to the costs to comply with the fitting factor requirements) equals approximately $4,400 per type certification, which is not considered significant within the meaning of the RFA. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small rotorcraft manufacturers.

The two manufacturers of specialized component systems described earlier are also small entities; notwithstanding, the average $500 incremental cost can easily be passed on to purchasers given the inelastic demand for such specialized rotorcraft systems. There is not a substantial number of other rotorcraft systems. There is not a substantial number of other rotorcraft parts manufacturers that will be impacted by this rule. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small rotorcraft parts manufacturers.

International Trade Impact Assessment

Consistent with the Administration's belief in the general superiority, desirability, and efficacy of free trade, it is the policy of the Administrator to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and those affecting the import of foreign goods and services into the United States.

In accordance with that policy, the FAA is committed to develop as much as possible its aviation standards and practices in harmony with its trading partners. Significant cost savings can result from this, both to American companies doing business in foreign markets, and foreign companies doing business in the United States.

This rule is a direct action to respond to this policy by increasing the harmonization of the U.S. Federal Aviation Regulations with the European Joint Aviation Requirements. The result will be a positive step toward removing impediments to international trade.

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, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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 by State, local, and tribal government, 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 will 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 determined that this rule does not contain a significant intergovernmental or private sector mandate as defined by the Act.

List of Subjects in 14 CFR Parts 27 and 29

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

The Amendments

Accordingly, the FAA amends 14 CFR parts 27 and 29 as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. In § 27.625, a new paragraph (d) is added to read as follows:

§ 27.625 Fitting factors.

* * * * *

(d) Each seat, berth, litter, safety belt, and harness attachment to the structure must be shown by analysis, tests, or both, to be able to withstand the inertia forces prescribed in § 27.561(b)(3) multiplied by a fitting factor of 1.33.

3. Section 27.785 is amended by revising the heading and by adding a new sentence to the end of paragraph (k)(2) to read as follows:

§ 27.785 Seats, berths, litters, safety belts, and harnesses.

* * * * *

(k) * * *

(2) * * * The fitting factor required by § 27.625(d) shall be applied.

§ 27.975 [Amended]

4. In § 27.975, paragraph (b) is amended by removing the words", unless a rollover is shown to be extremely remote".

5. In § 27.1329, a new paragraph (f) is added to read as follows:

§ 27.1329 Automatic pilot system.

* * * * *

(f) If the automatic pilot system can be coupled to airborne navigation equipment, means must be provided to indicate to the pilots the current mode of operation. Selector switch position is not acceptable as a means of indication.

6. In § 27.1365, a new paragraph (c) is added to read as follows:

§ 27.1365 Electric cables.

* * * * *

(c) Insulation on electrical wire and cable installed in the rotorcraft must be self-extinguishing when tested in accordance with Appendix F, Part I(a)(3), of part 25 of this chapter.

PART 29—AIRWORTHINESS STANDARDS:TRANSPORT CATEGORY ROTORCRAFT

7. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

8. In § 29.625, a new paragraph (d) is added to read as follows:

§ 29.625 Fitting factors.

* * * * *

(d) Each seat, berth, litter, safety belt, and harness attachment to the structure must be shown by analysis, tests, or both, to be able to withstand the inertia forces prescribed in § 29.561(b)(3) multiplied by a fitting factor of 1.33.

9. Section 29.785 is amended by revising the heading and by adding a new sentence to the end of paragraph (k)(2) to read as follows:

§ 29.785 Seats, berths, litters, safety belts, and harnesses

* * * * *

(k) * * *

(2) * * * The fitting factor required by § 29.625(d) shall be applied.

§ 29.923 [Amended]

10. In § 29.923(a), the first sentence of the introductory text is amended adding the phrase "and (p)" immediately following the reference to paragraph "(n)".

§ 29.975 [Amended]

11. In § 29.975, paragraph (a)(7) is amended by removing the words ", unless a rollover is shown to be extremely remote".

12. In § 29.1329, a new paragraph (f) is added to read as follows:

§ 29.1329 Automatic pilot system.

* * * * *

(f) If the automatic pilot system can be coupled to airborne navigation equipment, means must be provided to indicate to the pilots the current mode of operation. Selector switch position is not acceptable as a means of indication.

13. In § 29.1351, paragraph (d)(1)(iii) is removed.

§ 29.1351 General.

14. In § 29.1359, a new paragraph (c) is added to read as follows:

§ 29.1359 Electrical system fire and smoke protection.

* * * * *

(c) Insulation on electrical wire and cable installed in the rotorcraft must be self-extinguishing when tested in accordance with Appendix F, Part I(a)(3), of part 25 of this chapter.

Issued in Washington, DC, on August 7, 1998.

Jane F. Garvey,

Administrator.

[FR Doc. 98–21609 Filed 8–11–98; 8:45 am]

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H.R. 643/P.L. 105–218

To designate the United States courthouse to be constructed at the corner of Superior and Huron Roads, in Cleveland, Ohio, as the "Carl B. Stokes United States Courthouse". (Aug. 7, 1998; 112 Stat. 912)

H.R. 1151/P.L. 105–219

Credit Union Membership Access Act (Aug. 7, 1998; 112 Stat. 913)

H.R. 1385/P.L. 105–220

Workforce Investment Act of 1998 (Aug. 7, 1998; 112 Stat. 936)

H.R. 3152/P.L. 105–221

Amy Somers Volunteers at Food Banks Act (Aug. 7, 1998; 112 Stat. 1248)

H.R. 3731/P.L. 105–222

To designate the auditorium located within the Sandia Technology Transfer Center in Albuquerque, New Mexico, as the "Steve Schiff Auditorium". (Aug. 7, 1998; 112 Stat. 1249)

H.R. 4354/P.L. 105–223

To establish the United States Capitol Police Memorial Fund on behalf of the families of Detective John Michael Gibson and Private First Class Jacob Joseph Chestnut of the United States Capitol Police. (Aug. 7, 1998; 112 Stat. 1250)

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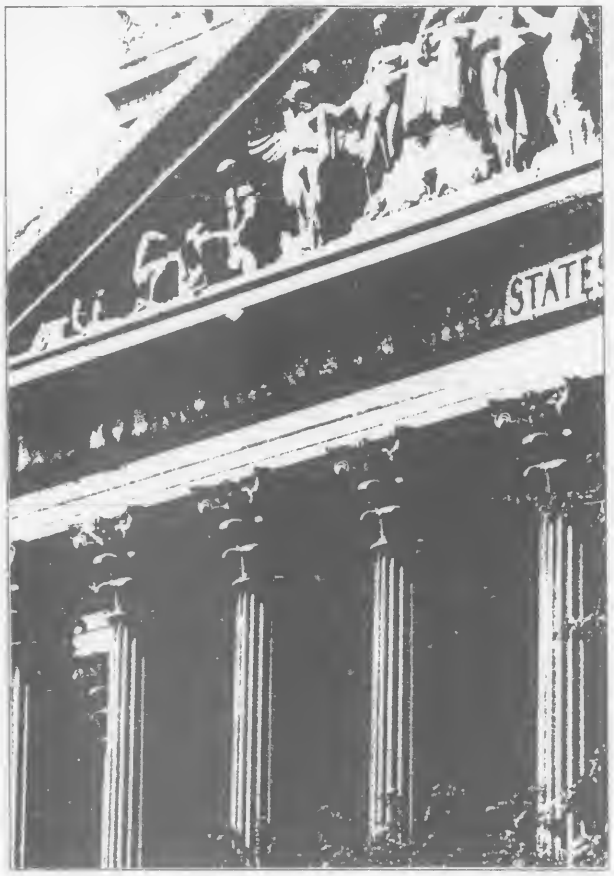

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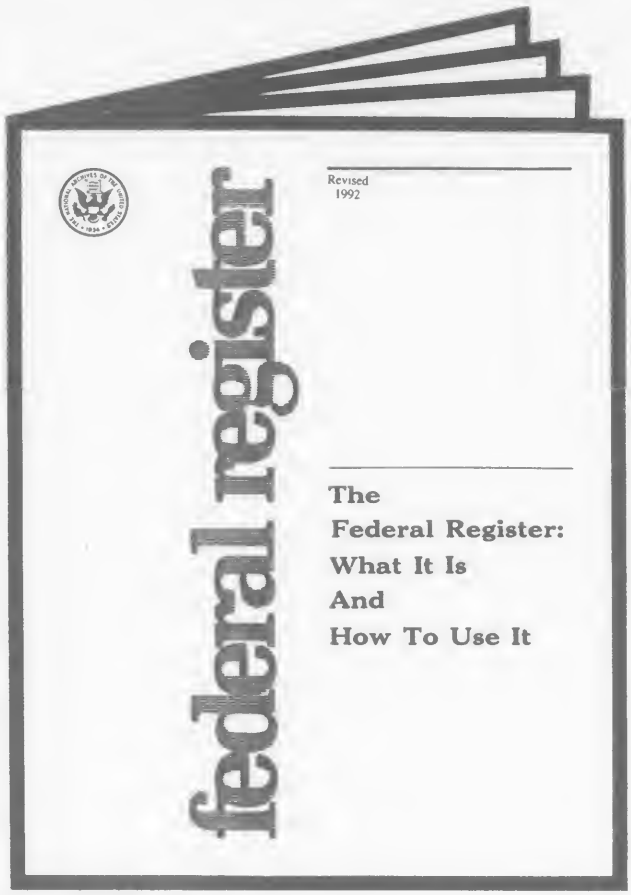

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