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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

Proclamation 6361 of October 21, 1991

National Down Syndrome Awareness Month, 1991

By the President of the United States of America

A Proclamation

Down Syndrome is one of the most common congenital causes of mental retardation. According to the Department of Health and Human Services, it affects approximately 4,000 babies in the United States each year. At one time in our history, people with Down Syndrome were stigmatized or, all too frequently, committed to institutions. Now they are benefitting from important advances in research, education, and health care.

Today we know that many individuals with Down Syndrome are both determined and able to lead active, productive lives. Thanks to early intervention and mainstreaming, as well as improved treatment of physical health problems related to Down Syndrome, thousands are doing just that.

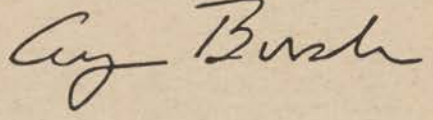
In recent years, more and more parents have been able to obtain the information and support that they need to cope with the unique challenges of rearing a child with Down Syndrome. Through special classes and mainstream programs in schools, more and more young people with this developmental disability are joining in the exciting process of learning and discovery. Many are also working to achieve their fullest potential through vocational training and independent living programs. Their achievements, underscored by recent television appearances of actors with Down Syndrome, are helping to dispel old myths and misconceptions about the disorder.

Much of this progress has been made possible by the vision and hard work of concerned researchers, physicians, educators, and parents, including members of private voluntary organizations such as the National Down Syndrome Congress and the National Down Syndrome Society. Working together with government agencies, these Americans have helped to affirm the God-given abilities and worth of persons with Down Syndrome. This month, we express our admiration and our support for their efforts.

To help promote greater understanding of Down Syndrome, the Congress, by Senate Joint Resolution 131, has designated the month of October 1991 as "National Down Syndrome Awareness Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month of October 1991 as National Down Syndrome Awareness Month. I invite all Americans to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of October, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 91-25704
Filed 10-21-91; 4:25 pm]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 92–1 of October 4, 1991

Presidential Determination on Proposed Agreement for Cooperation Between the United States of America and the Republic of Poland Concerning Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement for Cooperation Between the United States of America and the Republic of Poland Concerning Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed agreement and authorize you to arrange for its execution.

George Bush

THE WHITE HOUSE,
Washington, October 4, 1991.

[FR Doc. 91–25687
Filed 10–21–91; 3:39 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, and 278

[Amendment No. 344]

Food Stamp Program: Purchase of Prepared Meals by Homeless Food Stamp Program Recipients

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On March 11, 1987, the Department published an interim rulemaking at 52 FR 7554, which implemented the food stamp-related amendments of the Homeless Eligibility Clarification Act, Public Law 99–570, title XI, 100 Stat. 3207 (1986). Subsequently, on June 30, 1988, the Department published a final rulemaking at 53 FR 24671 implementing as final regulations the provisions of the interim rulemaking and making certain technical amendments. The June 30, 1988 rulemaking directed that all of its provisions would cease to be effective after September 30, 1990. The purpose of this rulemaking is to formally reinstate the provisions of the March 11, 1987 rulemaking and subsequent final rulemaking into the Code of Federal Regulations.

DATES: This action is effective November 22, 1991.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Dwight Moritz, Chief, Coupon and Retailer Branch, Food Stamp Program, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 756–3418.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule has been reviewed under Executive Order 12291 and the Secretary of Agriculture's Memorandum No. 1512–1. The Department has classified this action as non-major. The effect of this action on the economy will be less than $100 million and it will have an insignificant effect on costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the ability of United States-based enterprises to compete with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice(s) to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.). Betty Jo Nelsen, Administrator of the Food and Nutrition Service (FNS), has certified that this final rule will not have a significant economic impact on a substantial number of small entities. State and local agencies that administer the Program will be affected. Public or private nonprofit meal providers will be affected because of changes which will allow them to accept food stamps in payment for meals served to homeless food stamp recipients. The rule will also affect retail food stores and wholesale food concerns which accept and redeem food stamps. Thus, while the rule may affect a substantial number of small entities, the effect on any one entity will not be significant.

Paperwork Reduction Act

The reporting and recordkeeping requirements contained in part 278 of this rule which permit homeless meal providers to accept food stamps and to redeem such stamps through wholesale food concerns have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The OMB approval numbers for these requirements are 0584–0008 and 0584–0085.

Justification for Final Rule

This action is a reinstatement of a prior interim rulemaking and related final rule. It is non-controversial, contains no new policy issues and recodifies provisions the authority for which was continued by the Mickey Leland Memorial Domestic Hunger Relief Act (Title XVII, Pub. L. 101–624, 104 Stat. 3783) (the Leland Act) effective September 29, 1990. The Department provided the public an opportunity to file comments in response to the identical, but for technical changes, interim rule published March 11, 1987. Betty Jo Nelsen, Administrator, FNS, has determined in accordance with 5 U.S.C. 553(b) that publishing a proposed rule subject to public comment is unnecessary under those circumstances and therefore not in the public interest.

Background

On March 11, 1987, the Department published an interim rulemaking at 52 FR 7554, which implemented amendments of the Homeless Eligibility Clarification Act (Pub. L. 99–570) that were related to the administration of the Food Stamp Program. The Homeless Eligibility Clarification Act provided that homeless food stamp recipients (including newly-eligible residents of temporary shelters for the homeless) could use their food stamps to purchase prepared meals served by an authorized public or private nonprofit establishment which was approved by an appropriate State or local agency to feed homeless persons. The March 11, 1987 rulemaking directed that the provisions of that rulemaking would cease to be effective after September 30, 1990. This termination date was based on a provision in the Homeless Eligibility Clarification Act. The provisions of the interim rulemaking were adopted as final with only technical amendments by a subsequent final rule published on June 30, 1988 (53 FR 24671). The June 30, 1988, rulemaking made several technical amendments. Those amendments ceased to be effective after September 30, 1990 as well. The provisions in the Code of Federal Regulations to allow the use of food stamps by homeless persons to acquire meals at authorized nonprofit establishments expired because the

Department did not take action to remove the expiration date included in the interim and final rulemakings. Therefore, the Department must formally reinstate the provisions by this separate **Federal Register** action. The Department did not remove the expiration dates prior to September 30, 1990 because the Leland Act which deleted the September 30, 1990 expiration date under the definition of "Food" under the Food Stamp Act of 1977, was not enacted until November 28, 1990.

Reinstatement

The Department is using this action to officially announce the reinstatement, including the preambles and amendatory text of the March 11, 1987 and June 30, 1988, rulemakings with some technical changes as noted below.

Definitions

The March 11, 1987 interim rule contained four definitions: "Homeless food stamp household"; "Homeless meal providers"; "Eligible foods"; and "Retail food store." The definition of "Homeless food stamp household" was superseded by rulemaking published on September 29, 1987 (52 FR 36390) to implement Section 801 of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, July 22, 1987). Thus, the definition as it appeared in the March 11, 1987 interim rulemaking does not need to be reinstated.

The Leland Act removed the September 30, 1990 expiration date on and amended section (3)(g)(9) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2011 et seq.) which allowed homeless individuals to use their food stamps to purchase meals at nonprofit establishments from approved homeless meal providers. However, the regulations relating to that provision were removed from the Code of Federal Regulations and must be reinstated. The provision relating to section 3(k) of the Food Stamp Act concerning the definition of "Retail food store" allowing purchase of meals at nonprofit establishments by homeless persons was terminated and deleted from the Code of Federal Regulations effective September 30, 1990, as directed by the Homeless Eligibility Clarification Act. The termination date was not deleted in the Leland Act regarding the definition of "Retail Food Store" (section 3(k) of the Food Stamp Act); however, it was deleted concerning the definition of "Food" (section 3(g)(9) of the Food Stamp Act). However, the statutory definition of "Food" (section 3(g)(9) of the Food Stamp Act as amended by the Leland Act) provides that households that do not reside in permanent dwellings and households that have no fixed mailing address may use their food stamps to receive meals prepared and served by a public or private nonprofit establishment (approved by an appropriate State or local agency) that feeds such individuals and by private establishments that contract with the appropriate agency of the State to offer meals for such individuals at concessional prices. The Department believes that this wording in the Leland Act permitting food stamp households to use their stamps to purchase meals contains sufficient authority to provide for the authorization of public and private nonprofit establishments that feed the homeless to accept food stamps for such meals from such households. The amendment of section 3(g)(9) of the Food Stamp Act dealing with private establishments that contract with State agencies to offer meals at concessional prices to feed the homeless will be addressed in a separate rulemaking.

Additional Provisions Relating to the Participation of Homeless Persons

The June 30, 1988 rulemaking contained an amendment to change the regulatory references in §§ 274.2(h)(1) and 274.3(c)(1). However, these references no longer exist. Therefore, it is not necessary to reinstate them. The June 30, 1988 final rule changed a reference to paragraph (h) of § 273.11 to paragraph (i) of § 273.11 in sixteen places. This reference should be changed to newly-designated paragraph (j) and needs to be changed in seventeen places instead of sixteen. This action makes these changes.

The March 11, 1987 interim rule required that § 274.10(e), which provided that homeless persons could use their food stamps to purchase meals, and § 274.10(i), which stated that homeless persons were not to receive cash change from authorized homeless meal providers, were to have expired on September 30, 1990 as well. However, these sections were redesignated as §§ 274.10(g) and 274.10(j), respectively, by a subsequent rulemaking. When they were redesignated the Department neglected to include the expiration date in such redesignation. Therefore, these sections were not removed from the Code of Federal Regulations on September 30, 1990 and do not have to be reinstated.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food and Nutrition Service, Food stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 278

Administrative practice and procedure, Food and Nutrition Service, Banks, banking, claims, Food Stamps, Groceries—retail, groceries—wholesale, Penalties.

Accordingly, 7 CFR parts 271, 272, 273, and 278 are amended as follows:

1. The authority citation for Parts 271, 272, 273 and 278 continues to read as follows:

Authority: 7 U.S.C. 2011–2031.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2:

a. The definition of "Eligible foods" is amended by removing the word "and" before paragraph (7), replacing the period after paragraph (7) with "; and", and by adding a new paragraph (8).

b. The definition for "Homeless meal provider" is added in alphabetical order.

c. The definition of "Retail food store" is amended by adding the words "public or private nonprofit establishments, approved by an appropriate State or local agency, that feed homeless persons;" at the end of paragraph (2).

The additions read as follows:

§ 271.2 Definitions.

* * * * *

Eligible foods * * * (8) in the case of homeless food stamp households, meals prepared for and served by an authorized public or private nonprofit establishment (e.g. soup kitchen, temporary shelter), approved by an appropriate State or local agency, that feeds homeless persons.

* * * * *

Homeless meal provider means a public or private nonprofit establishment (e.g. soup kitchen, temporary shelter), approved by an appropriate State or local agency as defined in § 278.1(r), that feeds homeless persons.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, paragraph (g)(85), previously reserved, is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation* * * *

(85) *Amendment No. 286.* (i) The provisions of Amendment No. 286 which permit homeless meal providers to apply for authorization to accept food stamps were effective March 11, 1987.

(ii) All other provisions of this amendment were effective April 1, 1987.

4. In part 272, a new § 272.9, previously reserved, is added to read as follows:

§ 272.9 Approval of homeless meal providers.

The State food stamp agency, or another appropriate State or local governmental agency identified by the State food stamp agency, shall approve establishments serving the homeless upon sufficient evidence, as determined by the agency, that the establishment does in fact serve meals to homeless persons. Where the State food stamp agency identifies another appropriate State or local agency for the purpose of approving establishments serving the homeless, the State food stamp agency will remain responsible for insuring that the provisions of the preceding sentence are effectively carried out.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

5. In § 273.1:

a. In paragraph (b)(2)(ii), the reference to "§ 273.11(h)" is removed and a reference to "§ 273.11(j)" is added.

b. A new paragraph (f)(4)(iv) is added to read as follows:

§ 273.1 Household concept.

* * * * *

(f) *Authorized representatives* * * *

(4) * * *

(iv) Homeless meal providers, as defined in § 271.2, may not act as authorized representatives for homeless food stamp recipients.

* * * * *

§ 273.7 [Amended]

6. In § 273.7, paragraph (b)(1)(vii) is amended by removing the reference to "§ 274.10(e)" and adding in its place "274.10(a)(4)(iii)".

§ 273.8 [Amended]

7. In § 273.8, paragraph (c)(3) is amended by removing the reference to "§ 273.11(h)(1)" and the two references to "§ 273.11(h)" and adding in their place "§ 273.11(j)(1)" and "§ 273.11(j)", respectively.

§ 273.9 [Amended]

8. In § 273.9 paragraph (b)(4) is amended by removing the reference to "§ 273.11(h)(1)" and the two references to "§ 273.11(h)" and adding in their place "§ 273.11(j)(1)" and "§ 273.11(j)", respectively.

9. In § 273.9, paragraph (b)(5)(i) is amended by removing the reference to "§ 273.11(j)" and adding in its place a reference to "§ 273.11(k)".

§ 273.11 [Amended]

10. In § 273.11:

a. Paragraphs (h), (i), and (j), are redesignated as paragraphs (i), (j), and (k), respectively, and a new paragraph (h) is added.

b. The seventeen references to paragraphs "(h)(2)(i)(A)" and "(h)(2)(i)(B)" in newly redesignated paragraph (j)(2)(ii) are removed and replaced by "(j)(2)(i)(A)" and "(j)(2)(i)(B)", respectively.

c. The reference to paragraph "(h)(2)(i)" in newly redesignated paragraph (j)(2)(iii) is removed and replaced by "(j)(2)(i)".

d. The reference to paragraphs "(h)(2)(i) and (iv)" in newly redesignated paragraph (j)(2)(v) is removed and replaced by "(j)(2)(i) and (iv)".

e. The reference to paragraphs "(h)(2)(i) and (iv)" in newly redesignated paragraph (j)(2)(vi) is removed and replaced by "(j)(2) (i) and (iv)".

f. The reference to paragraphs "(h)(2)(i)" and "(h)(2)(iv)" in newly redesignated paragraph (j)(2)(vii) is removed and replaced by "(j)(2)(i)" and "(j)(2)(iv)", respectively.

g. The references to paragraphs "(h)(2)(i)", "(h)(2)(iv)", and "(h)(2)(vi)" in newly redesignated paragraph (j)(4) are removed and replaced by "(j)(2)(i)", (j)(2)(iv), and (j)(2)(vi), respectively.

h. The reference to paragraph "(h)(2)(vi)" in newly redesignated paragraph (j)(5)(i)(B) is removed and replaced by "(j)(2)(vi)".

i. The references to paragraphs "(h)(4)" and "(h)(5)(i)" in newly redesignated paragraph (j)(5)(ii) are removed and replaced by "(j)(4)" and "(j)(5)(i)," respectively.

j. The reference to paragraph "(h)(2)" in newly redesignated paragraph (j)(6) is removed and replaced by "(j)(2)".

k. The reference to paragraph "(h)(5)" in newly redesignated paragraph (j)(7) is removed and replaced by "(j)(5)".

The addition reads as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(h) *Homeless food stamp households.* Homeless food stamp households shall be permitted to use their food stamp benefits to purchase prepared meals from homeless meal providers authorized by FNS under § 278.1(h).

* * * * *

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

11. In § 278.1:

a. Paragraph (c) is amended by removing the word "or" from the end of (c)(4), by redesignating (c)(5) as (c)(6), and by adding a new (c)(5).

b. Paragraph (r), previously reserved, is added.

The additions read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

* * * * *

(c) *Wholesalers.* * * * (5) for one or more specified authorized homeless meal providers, or

* * * * *

(r) *Homeless Meal Providers.* FNS shall authorize as retail food stores, those homeless meal providers which apply and qualify for authorization to accept food stamps from homless food stamp recipients. Such meal providers must be public or private nonprofit organizations as defined by the Internal Revenue Service (I.R.C. 501(c)(3)), must serve meals that include food purchased by the provider, must meet the requirements of paragraphs (a) and (b) of this section, and must be approved by an appropriate State or local agency, pursuant to § 272.9. Homeless meal providers shall be responsible for obtaining approval from an appropriate State or local agency and shall provide written documentation of such approval to FNS prior to approval of the meal provider's application for authorization. (If such approval is subsequently withdrawn, FNS authorization shall be withdrawn). Homeless meal providers serving meals which consist wholly of donated foods shall not be eligible for authorization. In an area in which FNS, in consultation with the Department's Office of Inspector General, finds evidence that the authorization of a homeless meal provider would damage the Food Stamp Program's integrity, FNS shall limit the participation of that homeless meal provider, unless FNS determines that the establishment or shelter is the only one of its kind serving the area.

* * * * *

§ 278.2 [Amended]

12. In § 278.2:

a. The last sentence of paragraph (a) is amended by adding the words ", except that homeless meal providers may redeem coupons for eligible food through authorized retail food stores" to the end of the sentence before the period.

b. Paragraph (b) is amended by adding six new sentences between the second and third sentences of the paragraph.

c. Paragraph (c) is amended by adding a new sentence before the last sentence of the paragraph.

d. Paragraph (d) is amended by adding a new sentence following the second sentence of the paragraph.

e. Paragraph (g) is amended by adding a new sentence between the third and fourth sentences of the paragraph.

f. The last sentence of paragraph (g) is amended by removing the word "and" after "group living arrangements", and by adding the words ", and homeless meal providers for homeless food stamp households" after the word "children".

g. Paragraph (h) is amended by adding a new sentence to the end of the paragraph.

h. A new paragraph (l) is added

The additions read as follows:

§ 278.2 Participation of retail food stores.

* * * * *

(b) *Equal treatment for coupon customers.* * * * However, homeless meal providers may only request *voluntary* use of food stamps from homeless food stamp recipients and may not request such household using food stamps to pay more than the average cost of the food *purchased* by the homeless meal provider contained in a meal served to the patrons of the meal service. For purposes of this section, "average cost" is determined by averaging food costs over a period of up to one calendar month. Voluntary payments by food stamp recipients in excess of such costs may be accepted by the meal providers. The value of donated foods from any source shall not be considered in determining the amount to be requested from food stamp recipients. All indirect costs, such as those incurred in the acquisition, storage, or preparation of the foods used in meals shall also be excluded. In addition, if others have the option of eating free or making a monetary donation, food stamp recipients must be provided the same option of eating free or making a donation in money or food stamps. * * *

(c) *Accepting coupons.* * * * However, in the case of homeless meal providers, retail food stores may accept detached coupons which have been accepted by the homeless meal provider. * * *

(d) *Making Change.* * * * However, in the case of homeless meal providers, neither cash change nor credit slips shall be provided under any circumstances when food stamps are used to purchase meals.

* * * * *

(g) *Redeeming coupons.* * * * Homeless meal providers may purchase food in authorized retail food stores and through authorized wholesale food concerns.* * *

(h) *Identifying Coupon Users.* * * * Homeless meal providers redeeming detached coupons through retail food stores shall present their retailer authorization card as proof of their eligibility to redeem coupons through retail food stores.

* * * * *

(l) *Checking homeless meal provider recipients.* Homeless meal providers shall establish a food stamp patron's right to purchase meals with coupons.

§ 278.3 [Amended]

13. In § 278.3, paragraph (a) is amended by:

a. Removing the word "or" in the first sentence following the words "drug addict or alcoholic treatment programs", and adding the words "or, from one or more specified homeless meal providers" after "battered women and children", and

b. Adding the words "or from one or more homeless meal providers" after the words "battered women and children," wherever they appear in the second sentence.

§ 278.4 [Amended]

14. In § 278.4, the second sentence of paragraph (c) is amended by adding the words "and homeless meal providers," after the words "rehabilitation programs".

§ 278.6 [Amended]

15. In § 278.6:

a. Paragraph (e)(2)(iii) is amended by adding the words "homeless meal providers" following the words "drug addict and alcoholic treatment programs,".

b. Paragraph (e)(2)(iv) is amended by adding the words "homeless meal providers" following the words "drug addict and alcoholic treatment program,".

c. Paragraph (e)(3)(iii) is amended by adding the words "homeless meal provider," after the words "group living arrangement".

d. Paragraph (e)(3)(v) is amended by adding the words "homeless meal providers," after the words "group living arrangements,".

16. In § 278.9, paragraphs (e) and (g), previously reserved, are added to read as follows:

§ 278.9 Implementation of amendments relating to the participation of retail food stores, wholesale food concerns and insured financial institutions.

* * * * *

(e) *Amendment No. 286.* The provisions for part 278 of *Amendment No. 286* were effective March 11, 1987 for purposes of submitting applications for authorization to accept food stamps. For all other purposes, the effective date was April 1, 1987.

* * * * *

(g) *Amendment No. 304.* The technical amendment for part 278 of *Amendment No. 304* was effective August 1, 1988.

* * * * *

Dated: October 1, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 91-25295 Filed 10-22-91; 8:45 am]

BILLING CODE 3410-30-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 150

RIN 3150-AD53 and RIN 3150-AD38

Revisions to Procedures to Issue Orders; Deliberate Misconduct by Unlicensed Persons, Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on August 15, 1991 (56 FR 40664), which establishes procedures to be used in issuing orders to licensed and unlicensed persons to provide reasonable assurance that licensed activities will be conducted in a manner that will protect the public health and safety. This action is necessary to remove duplicate material and restore the appropriate cross references to part 39.

EFFECTIVE DATE: August 15, 1991.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301-492-7758.

SUPPLEMENTARY INFORMATION: In the August 15, 1991, edition of the **Federal**

Register, in the third column of page 40693, make the following corrections to the introductory text of § 150.20(b):

1. On line six remove the words "(a) through (g)";

2. On lines eight and nine remove the words " § 70.7 of part 70 of this chapter";

3. On line eleven between the words "part" and "of" insert the following: "34, §§ 39.15 and 39.31 through 39.77 inclusive of part 39"

As corrected, the introductory text of § 150.20(b) reads as follows:

§ 150.20 Recognition of Agreement State licenses.

* * * * *

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person engaging in activities in a non-Agreement State or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to the provisions of §§ 30.7 (a) through (g), 30.9, 30.10, 30.14(d), 30.34, 30.41, 30.51 to 30.63, inclusive, of part 30 of this chapter; §§ 40.7 (a) through (g), 40.9, 40.10, 40.41, 40.51, 40.61, 40.63 inclusive, 40.71 and 40.81 of part 40 of this chapter; §§ 70.7, 70.9, 70.10, 70.32, 70.42, 70.51 to 70.56, inclusive, §§ 70.60 to 70.62, inclusive, and to the provisions of 10 CFR parts 19, 20 and 71 and subpart B of part 34, §§ 39,15 and 39.31 through 39.77 inclusive of part 39 of this chapter. In addition, any person engaging in activities in non-Agreement States or in offshore waters under the general licenses provided in this section:

* * * * *

Dated at Bethesda, Maryland, this 15th day of October 1991.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 91-25533 Filed 10-22-91; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

Administration—Delegation of Authority for Financing Program

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: This rule increases the delegated authority of the experienced branch manager and assistant branch manager in Gulfport, Mississippi to approve SBA guaranteed loans. This change will expedite Agency action in processing loan applications.

EFFECTIVE DATE: This rule is effective October 23, 1991.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Assistant Administrator for Financial Assistance, Small Business Administration, 409 3rd Street SW., Washington DC 20416. Telephone (202) 205-6490.

SUPPLEMENTARY INFORMATION: The SBA branch manager and assistant branch manager in Gulfport, Mississippi are experienced loan officers. The branch manager has 25 years experience with the SBA and was recently transferred from a district office where he had delegated authority to approve 7(a) guaranteed loans up to $750,000. It is anticipated that loan volume in Gulfport would increase if the SBA participating lenders were assured that the personnel there had greater delegated authority. This would mean improved program delivery and more expeditious processing of guaranteed loan applications. Greater delegated approval authority would mean that loan applications for larger amounts would not need to be transmitted to a district office for processing. In that event, the loan applicant and the lender are both served with quicker and more accurate processing, and SBA is served by quality lending and better relations with its participating lenders.

At the present time, both the SBA branch manager and the assistant branch manager in Gulfport, Mississippi have delegated authority to approve SBA guaranteed loans up to $250,000. This amendment increases their authority to $500,000, and SBA is undertaking this change in their delegation of authority in light of their experience as lending officers.

Because this final rule governs matters of agency organization, management and personnel and makes no substantive change to the current regulations, SBA is not required to determine if these changes constitute a major rule for purposes of Executive Order 12291, to determine if they have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (U.S.C. 601 *et seq.*), or to do a Federalism assessment pursuant to Executive Order 12612. Finally, SBA certifies that these changes will not impose an annual recordkeeping or reporting requirement on 10 or more persons under the Paperwork Reduction Act (44 U.S.C. ch 35).

SBA is publishing this regulation governing agency organization, procedure and practice as a final rule without opportunity for public comment pursuant to 5 U.S.C. 553(b)(3)(A).

List of Subjects in 13 CFR Part 101

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions [Government agencies].

PART 101—[AMENDED]

Accordingly, part 101 of title 13, chapter I of the Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for part 101 continues to read as follows:

Authority: Secs. 4 and 5, Pub. L. 85-536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Pub. L. 85-699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Pub. L. 93-386 (Aug. 23, 1974); and 5 U.S.C. 552.

§ 101.3-2 [Amended]

2. § 101.3-2, part I, section A, item 1.b., line 11 is amended by adding "Gulfport, MS," after "Corpus Christi,".

3. § 101.3-2, part I, section A, item 1.b., line 16 is amended by removing "250,000" in the approve column and adding, in lieu thereof, "500,000".

(Catalog of Federal Domestic Assistance 59.012 Small Business Loans (Regular Business Loans—7(a) Loans))

Dated: October 3, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-25360 Filed 10-22-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-63; Special Conditions No. 25-ANM-50]

Special Conditions: Modified Avions Marcel Dassault-Breguet Aviation Model Mystere-Falcon 200 Airplane: High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Avions Marcel Dassault-Breguet Aviation Model Mystere-Falcon 200 airplane modified by Duncan Aviation, Inc., of Lincoln, Nebraska. This airplane is equipped with high-technology digital avionics systems that perform critical functions. The applicable regulations do not contain

adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions performed by this system are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is October 11, 1991. Comments must be received on or before December 9, 1991.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-63, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked Docket No. NM-63. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM-113, Transport Standards Staff, Transport Airplane Directorate Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-63." The postcard will be date/time stamped, and returned to the commenter.

Background

On August 2, 1991, Duncan Aviation Inc., applied for a Supplemental Type Certificate to modify the Avions Marcel Dassault-Breguet Aviation Model Mystere-Falcon 200 airplane. The proposed modification incorporates a number of novel or unusual design features, such as digital avionics consisting of a dual electronic flight instrument system (EFIS) which is vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.115, subchapter C, of the FAR, Duncan Aviation Inc., must show that the altered Avions Marcel Dassault-Breguet Aviation Model Mystere-Falcon 200 airplane meets the applicable requirements as specified in §§ 21.101 (a) and (b), unless: (1) Otherwise specified by the Administrator; (2) compliance with later effective amendments is elected or required under §§ 21.101 (a) and (b); or (3) special conditions are prescribed by the Administrator.

The requirements specified in § 21.101(a) are the regulations incorporated by reference in Type Certificate No. A7EU for the Avions Marcel Dassault-Breguet Aviation Model Mystere-Falcon 200 airplane. Those are part 4b of the Civil Air Regulations (CAR) of December 1953 through Amendment 4b-12 and SR422B. In addition, the regulations incorporated by reference include certain sections of part 25 of the Federal Aviation Regulations (FAR). Those sections of part 25 pertinent to this installation are: § 25.1309 in lieu of 4b.606 for new systems, §§ 25.1351 through 25.1359 in lieu of 4b.621 through 4b.626, § 25.1529, and appendix F, as amended by Amendment 25-1 through 25-43; § 25.603 in lieu of 4b.301, and 25.1581 in lieu of 4b.740, as amended by Amendments 25-1 through 25-46. These special conditions will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (that is, Part 25 requirements) do not contain adequate or appropriate safety standards for the modified Avions Marcel Dassault-Breguet Aviation Model Mystere-Falcon 200 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established by the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.115(a).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, these special conditions require that the new technology electrical and electronic systems, such as the EFIS, be designed and installed to preclude component damage and interruption of function due to HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communication, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with HIRF protection special conditions is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz - 500 KHz	80	80
500 KHz - 2 MHz	80	80
2 MHz - 30 MHz	200	200
30 MHz - 100 MHz	33	33
100 MHz - 200 MHz	33	33
200 MHz - 400 MHz	150	33
400 MHz - 1 GHz	8,300	2,000
1 GHz - 2 GHz	9,000	1,500
2 GHz - 4 GHz	17,000	1,200
4 GHz - 6 GHz	14,500	800
6 GHz - 8 GHz	4,000	666
8 GHz - 12 GHz	9,000	2,000
12 GHz - 20 GHz	4,000	509
20 GHz - 40 GHz	4,000	1,000

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

Conclusion

This action affects only a certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may have not been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Final Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the modified Avions Marcel Dassault-Breguet Aviation Model Mystere-Falcon 200 airplane:

1. *Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to externally radiated electromagnetic energy.

2. The following definition applies with respect to this special condition: *Critical Function.* Function whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 11, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-25483 Filed 10-22-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-CE-54-AD; Amendment 39-8071; AD 91-23-02]

Airworthiness Directives; Aviat (Formerly Christen Industries) Christen Model A-1 Husky Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Aviat Christen Model A-1 airplanes. This action requires the replacement of the engine carburetor air intake box. Reports of valve failure on several carburetor air intake boxes that are installed on early models of the affected airplanes have been reported. The actions specified by this AD are intended to prevent loss of airflow to the carburetor and possible loss of engine power, which could result in loss of control of the airplane.

EFFECTIVE DATE: December 10, 1991.

ADDRESSES: A new carburetor air intake box, part number 35453, may be obtained from the manufacturer on an exchange basis by contacting Aviat, Inc., P.O. Box 1149, Afton, Wyoming 83110; Telephone (307) 886-3151. Information that is related to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Roman Gabrys, Aerospace Engineer, FAA, Denver Aircraft Certification Field Office, 2390 Syracuse Street, Denver, Colorado, 80207; Telephone (303) 398-0839; Facsimile (303) 388-2903.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would be applicable to certain Aviat Christen Model A-1 airplanes was published in the **Federal Register** on August 1, 1991 (56 FR 36747). The action proposed the replacement of the engine carburetor air intake box with an improved part.

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. After careful review, 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 nor add any additional burden upon the public than was already proposed.

It is estimated that 45 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 hour per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts are provided free of charge by the manufacturer on an exchange basis. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,475.

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 "major rule" under Executive Order 12291; (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, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

91-23-02 Aviat (formerly Christen Industries): Amendment 39-8071; Docket No. 91-CE-54-AD.

Applicability: Christen Model A-1 Husky airplanes (serial numbers 1001 through 1045), certificated in any category.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent loss of airflow to the carburetor and possible loss of engine power, which could result in loss of control of the airplane, accomplish the following:

(a) Remove the carburetor air intake box and replace it with a new carburetor air intake box, part number 35453. Reinstall the same bolts and safety wire. Ensure that there is at least a 0.25-inch clearance between the actuating arm and the side of the air intake scoop and that the box and intake screen fit properly at the forward end of the scoop.

Note: Carburetor air intake boxes, part number 35453, are available free of charge on an exchange basis from the manufacturer at the address specified in paragraph (d) of this AD.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane 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, Denver Aircraft Certification Field Office, FAA, 2390 Syracuse Street, Denver, Colorado 80207. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Denver Aircraft Certification Field Office.

(d) All persons affected by this directive may obtain a new carburetor air intake box, part number 35453, on an exchange basis by contacting Aviat, Inc., P.O. Box 1149, Afton, Wyoming 83110; Telephone (307) 886-3151. Information that is related to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on December 10, 1991.

Issued in Kansas City, Missouri, on October 11, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-25480 Filed 10-22-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-CE-58-AD; Amendment 39-8072; AD 91-23-03]

Airworthiness Directives; Avions Mudry & Cie Model CAP10B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Avions Mudry & Cie Model CAP10B airplanes. This action requires a modification to the fuel system. Several incidents have occurred where air entered into the inverted flight valve on the affected airplanes. The actions specified by this AD are intended to prevent engine stoppage caused by this condition.

DATES: Effective December 10, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 10, 1991.

ADDRESSES: Service Bulletin CAP10B No. 13, dated May 14, 1991, that is discussed in this AD may be obtained from Avions Mudry & Cie, B.P. 214, 27300 Bernay, France; Telephone (33) 32 43 47 34; Facsimile (33) 32 43 47 90. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Carl F. Mittag, Project Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2716; or Mr. Michael Dahl, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Avions Mudry & Cie Model CAP10B airplanes was published in the **Federal Register** on July 29, 1991 (56 FR 35837). The action proposed the modification of the fuel system in accordance with paragraph 2. Assembly Instructions in Avions Mudry & Cie CAP10B Service Bulletin No. 13, dated May 14, 1991.

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. After careful consideration, 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 nor add any additional burden upon the public than was already proposed.

It is estimated that 25 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $403 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $21,075.

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 "major rule" under Executive Order 12291; (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 on the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

91-23-03 Avions Mudry & Cie: Amendment 39-8072; Docket No. 91-CE-58-AD.

Applicability: Model CAP10B Airplanes (serial numbers 01 through 208), certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent engine stoppage caused by air entering the inverted flight valve, accomplish the following:

(a) Modify the fuel system in accordance with paragraph 2. Assembly Instructions of Avions Mudry & Cie Service Bulletin CAP10B No. 13, dated May 14, 1991.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane 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, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(d) The modifications required by this AD shall be done in accordance with Avions Mudry & Cie Service Bulletin CAP10B No. 13, dated May 14, 1991. 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 Avions Mudry & Cie, B.P. 214, 27300 Bernay, France. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC.

This amendment becomes effective on December 10, 1991.

Issued in Kansas City, Missouri, on October 11, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-25481 Filed 10-22-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-CE-10-AD; Amendment 39-8070; AD 91-23-01]

Airworthiness Directives; Beech Model 77 (Skipper) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) this is applicable to certain Beech Model 77 (Skipper) airplanes. This action requires inspections for cracks in the nose landing gear (NLG) fork and, if found cracked, replacement of the fork and axle assembly. There have been reports of cracks in the NLG fork on the affected airplanes. The actions specified by this AD are intended to detect and correct this condition prior to NLG failure and the airplane damage that could result.

DATES: Effective December 3, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1991.

ADDRESSES: Beech Service Bulletin No. 2241, Revision 1, dated January 1991, that is discussed in this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4122.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech Model 77 (Skipper) airplanes was published in the Federal Register on March 27, 1991 (56 FR 12686). The action proposed inspections for cracks in the NLG fork and, if found cracked, replacement of the fork and axle assembly in accordance with the instructions in Beech Service Bulletin 2241, Revision 1, dated January 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The manufacturer (Beech) asks for clarification for the repetitive inspections that would be required by paragraph (b) of the proposed AD. Beech believes that the fluorescent penetrant inspections should be performed every 500 hours time in service (TIS) as specified in Beech SB No. 2241. The FAA concurs that the fluorescent penetrant inspections should be performed every 500 hours TIS and the intent of the proposed AD was to require the repetitive inspections as specified in Beech SB 2241. The AD has been rewritten to make it more clear.

After careful consideration, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the correction described above and minor editorial corrections. These corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 312 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 hour per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $17,160.

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 "major rule" under Executive Order 12291; (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 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

91–23–01 Beech: Amendment 39–8070; Docket No. 91–CE–10–AD.

Applicability: Model 77 (Skipper) airplanes (serial numbers WA–1 through WA–312) that do not have a part number (P/N) 108–820010–653 nose landing gear fork and axle assembly installed, certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent failure of the nose landing gear fork and the airplane damage that could result, accomplish the following:

(a) within the next 50 hours time-in-service (TIS) after the effective date of this AD, fluorescent penetrant inspect the nose landing gear fork for cracks in accordance with the instructions in Beech Service Bulletin (SB) No. 2241, Revision 1, dated January 1991.

(1) If any crack is found, prior to further flight, remove and replace the nose landing gear fork and axle assembly with a (P/N) 108–820010–653 fork and axle assembly, and the requirements of this AD have been accomplished.

(2) If no cracks are found, accomplish the following:

(i) Fluorescent penetrant inspect the nose landing gear fork axle assembly at intervals not to exceed 500 hours TIS after the initial inspection required in paragraph (a) of this AD in accordance with the instructions in Beech SB No. 2241, Revision 1, dated January 1991; and visually inspect the nose landing gear fork axle assembly at every 100-hour TIS interval between the fluroescent penetrant inspections.

(ii) If any crack is found as a result of any of the inspections in paragraph (a)(2)(i) of this Ad, prior to further flight, remove and replace the nose landing gear fork and axle assembly with a (P/N) 108–820010–653 fork and axle assembly, and the repetitive inspections are no longer required.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(d) The inspections required by this AD shall be done in accordance with Beech Service Bulletin No. 2241, Revision 1, dated January 1991. 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 the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC.

This amendment becomes effective on December 3, 1991.

Issued in Kansas City, Missouri, on October 10, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 91–25482 Filed 10–22–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–AEA–14]

Revocation of Transition Area; Stone Harbor, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the 700 foot Transition Area established at Stone Harbor, NJ. The FAA has determined that this amount of controlled airspace is not needed to contain aircraft operating under instrument flight rules.

EFFECTIVE DATE: 0901 u.t.c. November 14, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917–0857.

SUPPLEMENTARY INFORMATION:

History

On June 28, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the 700 foot Transition Area established at Stone Harbor, NJ, due to non-utilization of this area by aircraft operating under instrument flight rules in controlled airspace (56 FR 32522).

Interested parties were invited to participate in this rulemaking proceeding submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations were republished in FAA Handbook 7400.6G, September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the 700 foot Transition Area established at Stone Harbor, NJ, due to non-utilization of this area by aircraft operating under instrument flight rules.

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 "major rule" under Executive Order 12291; (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

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Stone Harbor, NJ [Removed]

Issued in Jamaica, New York, on September 12, 1991.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 91-25546 Filed 10-22-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-AEA-13]

Revocation of Transition Area; Pitman, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the 700 foot Transition Area established at Pitman, NJ. This is necessary due to the deactivation of the Pitman Airport, Pitman, NJ, and the cancellation of all air traffic control procedures to this airport.

EFFECTIVE DATE: 0901 u.t.c. November 14, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

History

On June 28, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the 700 foot Transition Area established at Pitman, NJ, due to the deactivation of the Pitman Airport, Pitman, NJ, and the cancellation of all air traffic control procedures to this airport (56 FR 32521).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G, September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the 700 foot Transition Area established at Pitman, NJ, due to the deactivation of the Pitman Airport, Pitman, NJ, and the cancellation of all air traffic control procedures to this airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (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

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows

Pitman, NJ [Removed]

Issued in Jamaica, New York, on September 23, 1991.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 91-25545 Filed 10-22-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-AEA-17]

Establishment of Transition Area; Johnstown, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Johnstown, NY, 700 foot Transition Area to support the installation of a Non Directional Radio Beacon (NDB) and the development of a Standard Instrument Approach Procedure (SIAP) to the Fulton County Airport, Johnstown, NY. This action establishes that amount of controlled airspace deemed necessary by the FAA to ensure segregation of the aircraft using the SIAP under instrument flight rules (IFR) from aircraft operating under visual flight rules (VFR) in controlled airspace. Additionally, the airport status would be changed from VFR operations only to include IFR operations.

EFFECTIVE DATE: 0901 u.t.c. November 21, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

SUPPLEMENTARY INFORMATION:

History

On March 13, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Johnstown, NY, 700 foot Transition Area due to the installation of an NDB and development of a SIAP to the Fulton County Airport, Johnstown NY (55 FR 11957). The notice proposed to establish that amount of controlled airspace to ensure segregation of the IFR aircraft using the SIAP from non-controlled VFR aircraft operating in controlled airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for editorial changes and textual revisions, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G, September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a 700 foot Transition Area at Johnstown, NY, due to the installation of an NDB and development of a SIAP to the Fulton County Airport, Johnstown, NY.

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 "major rule" under Executive Order 12291; (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

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.191 [Amended]

2. Section 71.181 is amended as follows:

Johnstown, NY [New]

Fulton County Airport, Johnstown, NY (lat. 42°59'53"N., long. 74°20'02"W.)
Johnstown NDB (lat. 42°59'57"N., long. 74°19'58"W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the Fulton County Airport, Johnstown, NY, and within 5 miles either side of a 86° (T) 100° (M) bearing from the Johnstown NDB extending from the 7.3-mile radius to 8.5 miles east of the airport.

Issued in Jamaica, New York, on September 25, 1991

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 91-25484 Filed 10-22-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Parts 40 and 41

Regulations Under the Farm Labor Contractor Registration Act

AGENCY: Office of the Secretary, Labor.

ACTION: Final Rule; removal of regulations.

SUMMARY: The Department of Labor is issuing a final rule to remove the regulations found at 29 CFR parts 40 and 41, which were promulgated under the repealed Farm Labor Contractor Registration Act of 1963 (FLCRA). FLCRA was repealed and replaced by the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) in 1983. The FLCRA regulations in title 29 CFR do not affect the current operation of any program and are being removed from the CFR.

EFFECTIVE DATE: This rule is effective October 23, 1991.

FOR FURTHER INFORMATION CONTACT: Solomon Sugarman, Chief, Branch of Farm Labor Programs, Division of Farm Labor, Child Labor, and Polygraph Standards, Office of Program Operations, Wage and Hour Division, Employment Standards Administration; Telephone (202) 523-7605.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule imposes no reporting or recordkeeping requirements on the public.

II. Background

On January 14, 1983, the President signed into law the Migrant and Seasonal Agricultural Worker Protection Act, Public Law 97-470 (MSPA). Section 523 of MSPA repealed the Farm Labor Contractor Registration Act of 1963 (FLCRA).

The regulations in 29 CFR part 40—Farm Labor Contractor Registration—identify the registration procedures for farm labor contractors and their full-time employees under the Farm Labor Contractor Registration Act of 1963. The regulations in 29 CFR part 41—Interpretations of Farm Labor Contractor Registration Act of 1963—provide interpretations of statutory requirements. At the enactment of MSPA in 1983, FLCRA was repealed and FLCRA regulations at 29 CFR parts 40 and 41 were superseded by the regulations implementing the Migrant and Seasonal Agricultural Worker Protection Act at 29 CFR part 500.

The FLCRA regulations in title 29 CFR are primarily of historical value and do not affect the current operation of any program. Therefore, the Department of Labor has decided that it is no longer necessary to continue publication of the FLCRA regulations in future editions of title 29, and the regulations are being removed from the CFR.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Public Law 96-354, 94 Stat. 1165, 5 U.S.C. 601 et seq. pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2). In any event, the rule will not have a significant economic impact on a substantial number of small entities.

This document was prepared under the direction and control of Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Parts 40 and 41

Administrative practice and procedure, Agriculture, Aliens, Farmers, Health, Housing, Housing standards, Immigration, Insurance, Investigations, Migrant labor, Motor carriers, Motor vehicle safety, Occupational safety and health, Penalties, Reporting requirements, Transportation, Wages.

Promulgation of Final Rule

Accordingly, Title 29, Code of Federal Regulations, is hereby amended by removing parts 40 and 41.

Authority: Pub. L. 97-470, Title V, section 523, 96 Stat. 2600; 29 U.S.C. 1801 note.

Signed at Washington, DC this 16th day of October, 1991.

Lynn Martin,

Secretary of Labor.

Cari M. Dominguez,

Assistant Secretary for Employment Standards.

Samuel D. Walker,

Acting Administrator, Wage and Hour Division.

[FR Doc. 91-25528 Filed 10-22-91; 8:45 am]

BILLING CODE 4510-27-M

Wage and Hour Division

29 CFR Part 500

Migrant and Seasonal Agricultural Worker Protection

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The purpose of this document is to change the Public Registry toll-free telephone number listed in § 500.170 of Regulations, 29 CFR part 500.

EFFECTIVE DATE: This rule is effective October 23, 1991.

FOR FURTHER INFORMATION CONTACT: Solomon Sugarman, Chief, Branch of Farm Labor Programs, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. Telephone 1–800–800–0235. This is a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule imposes no reporting or recordkeeping requirements on the public.

II. Background

Section 500.170 of Regulations, 29 CFR part 500 requires the Administrator to establish a Central Public Registry of all persons issued a Certificate of Registration or a Farm Labor Contractor Employee Certificate. Information contained within the registry is made available upon request, either via the mail or by telephone. The toll-free number to call for obtaining information from the central public registry was 1–800–368–1008. The Department of Labor's change in phone service from one carrier to another has resulted in a new toll-free number for central public registry inquiries. The new number is 1–800–800–0235. The new service also eliminates the necessity for a separate telephone number for requests within the Washington, DC metropolitan area.

III. Summary of Rule

Section 500.170 of Regulations, 29 CFR part 500 is amended to provide for a new Central Public Registry toll-free telephone number for obtaining information contained in the registry. The new number is 1–800–800–0235. This section is also amended to delete the reference to a separate telephone number for requests within the Washington, DC metropolitan area.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1165, 5 U.S.C. 601 et seq. pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2). In any event, the rule will not have a significant economic impact on a substantial number of small entities.

Administrative Procedure Act

The Secretary has determined that the public interest requires the immediate issuance of these regulations in final form without prior notice-and-comment in order to change the toll-free telephone number for obtaining information contained in the registry required by § 500.170 of Regulations, 29 CFR part 500. The changes to the existing regulations are minor clarifying revisions needed to reflect the Department's changed telephone service.

Accordingly, the Secretary, for good cause, finds pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and public comment are impracticable and contrary to the public interest.

The Secretary also for good cause finds, pursuant to 5 U.S.C. 553(d)(3), that this rule cannot be published 30 days before its effective date.

This document was prepared under the direction and control of Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 500

Administrative practice and procedure, Agricultural, Aliens, Carpools, Farmer, Farm labor contractor, Housing standards, Immigration, Insurance, Investigation, Labor, Manpower training programs, Migrant labor, Motor carriers, Motor vehicle safety, Occupational safety and health, Penalties, Reporting requirements, Safety, Seasonal agricultural workers, Transportation, Wages.

For the reasons set forth above, 29 CFR part 500 is amended as set forth below.

Signed at Washington, DC, on this 17th day of October, 1991.

Samuel D. Walker,

Acting Administrator, Wage and Hour Division.

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

1. The authority citation for part 500 is revised to read as follows:

Authority: Pub. L. 97–470, 96 Stat. 2583 (29 U.S.C. 1801–1872); Secretary's Order No. 6–84, 49 FR 32473; Sec. 210A(f), Pub. L. 99–603, 100 Stat. 3359 (8 U.S.C. 1161(f)).

2. Section 500.170 is revised to read as follows:

§ 500.170 Establishment of registry.

The Administrator shall establish a central public registry of all persons issued a Certificate of Registration or a Farm Labor Contractor Employee Certificate. The central public registry shall be available at the Regional Offices of the Wage and Hour Division and its National Office in Washington, DC. Information filed therein shall be made available upon request. Requests for information contains in the registry may also be directed by mail to the Administrator, Wage and Hour Division Attn: MSPA, U.S. Department of Labor, Washington, DC 20210.

Alternatively, requests for registry information may be made by telephone by calling 1–800–800–0235, a toll-free number, during the hours of 8:15 a.m. to 4:45 p.m., Eastern time, on week days.

[FR Doc. 91–25529 Filed 10–22–91; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5–91–049]

Drawbridge Operation Regulations; Beaufort Channel, Beaufort, NC

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with request for comments.

SUMMARY: In order to evaluate changes requested by the North Carolina Department of Transportation to the drawbridge opening regulation for the

U.S. 70 Bridge across Beaufort Channel, mile 0.1, in Beaufort, North Carolina, the Coast Guard is issuing a temporary deviation from the regulations for a 60 day period. The flow of traffic across the bridge and the impact on marine traffic through the bridge during this period will be evaluated to determine whether the current regulations should be amended. The current regulations require that the bridge open on signal every hour on the half hour from 7:30 a.m. to 7:30 p.m. beginning May 1 through October 31 for pleasure craft. The requested change is to extend these restrictions year round.

Changes to drawbridge regulations are intended to provide for regularly scheduled drawbridge openings to reduce motor vehicle delays and congestion on the roads and highways linked by the drawbridge while still providing for the reasonable needs of navigation.

DATES: This temporary rule is effective from November 1, 1991, through December 30, 1991, unless sooner terminated. Comments must be received on or before December 15, 1991.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments and other materials referenced in this notice will be available for inspection and copying at that address. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Bill H. Brazier, Project Officer, and LT Monica L. Lombardi, Project Attorney, Fifth Coast Guard District.

Discussion of Temporary Rule

This temporary rule is being issued to evaluate the North Carolina Department of Transportation's request to change the existing regulations for the U.S. 70 Bridge across Beaufort Channel, mile 0.1, in Beaufort, North Carolina, by extending the current summer season bridge opening schedule year round.

The current regulation states the bridge shall open on signal every hour on the half hour from 7:30 a.m. to 7:30 p.m. beginning may 1 through October 31 for pleasure craft. The temporary rule would have the Beaufort Channel Bridge open on signal for pleasure craft year-round from 7:30 a.m. to 7:30 p.m. every hour on the half hour, 7-days a week.

This change has been requested due to a steady increase in year-round draw openings and the increase in vehicular traffic. By providing for hourly openings on the half-hour on a year-round basis, vehicular traffic congestion on U.S. 70 will be reduced and highway safety will be improved. The existing provision that the bridge opens on signal for public vessels of the United States, state and local governments, commercial vessels and vessels in distress would remain unchanged.

This temporary rule is for evaluation purposes only and will be effective for a 60 day period beginning November 1, 1991.

The impact of this proposal on highway and marine traffic during this period will be evaluated to determine if it will result in substantial improvements in vehicular traffic flow without unreasonably restricting marine traffic. If this rule results in an unforeseen disruption of traffic it may be withdrawn sooner than 60 days.

On August 30, 1991, the Commanding Officer, Fifth Coast Guard District issued a Notice of Proposed Rule Making concerning a permanent change. That Notice was published in the **Federal Register** on September 30, 1991 (56 FR 49445), and comments are being accepted through November 14, 1991.

Interested persons are invited to submit written comments, views, data, or arguments concerning any particular problems experienced by this temporary schedule. Persons submitting comments or data should include their name and address, identify the bridge, and give reasons for any recommended changes to the temporary rule. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope. The opening schedule may be changed in light of comments received. All comments received before the expiration of the comment period will be considered along with those received in connection with the Notice of Proposed Rulemaking before a final rule is issued. No public hearing will be held for this action.

The Coast Guard believes these temporary regulations will not unduly restrict vessel passage through the bridge, as vessel operators can plan transits to conform with this temporary regulation. Commercial vessels will not be affected by this change.

Regulatory Evaluation

This temporary regulation is considered to be non major under Executive Order 12291 and non-significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The Coast Guard expects the economic impact of this temporary regulation to be so minimal that a full Regulatory Evaluation is unnecessary. This conclusion is based on the fact that these regulations are temporary and will not apply to commercial vessels since they can transit the bridge at any time. Although recreational vessels may transit the bridge every hour on the half hour, the Coast Guard believes these restrictions will have no economic impact on these vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard will accept comments on the economic impact on small entities, in connection with the proposal for permanent regulations, and consider them at that time.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination is available in the rulemaking docket for inspection or copying where indicated under "ADDRESSES".

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, the Coast Guard will temporarily amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 449; 49 CFR 1.46; 33 CFR 1 05.1(g); 33 CFR 117.43.

2. Section 117.822 is temporarily amended by revising paragraph (a) and adding paragraph (c) to read as follows: (This is a temporary rule and will not appear in the Code of Federal Regulations).

§ 117.822 Beaufort Channel, North Carolina.

(a) The draw shall open on signal every hour on the half hour from 7:30 a.m. to 7:30 p.m. for the passage of pleasure craft. To accommodate approaching pleasure craft, hourly openings may be delayed up to 10 minutes past the half hour.

* * * * * * *

(c) This temporary rule is effective from November 1, 1991, through December 30, 1991.

Dated: October 8, 1991.

W.T. Leland;

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

[FR Doc. 91-25411 Filed 10-22-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA 11-1-5283; A-1-FRL-4017-9]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Denial of Petition for Reconsideration; Disapproval of Compliance Date Extension for Automobile Surface Coating

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of denial of petition for reconsideration.

SUMMARY: On December 30, 1985, Massachusetts requested the United States Environmental Protection Agency ("EPA") to approve a State Implementation Plan ("SIP") revision, extending the final date for compliance with the volatile organic compound ("VOC") emission limitations for automobile surface coating. The only such facility operating within Massachusetts was the General Motors Corporation ("GM") Framingham plant, which was located in the Boston nonattainment area. EPA disapproved the extension, 53 FR 36011 (Sept. 16, 1988), and GM timely petitioned the agency for reconsideration. EPA concludes that the petition for reconsideration should be denied in full and here addresses all issues GM has raised in its petition.

EFFECTIVE DATE: October 23, 1991.

ADDRESSES: Copies of the documents relevant to this notice are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, Chief, Planning and Technical Evaluation Section, (617) 565-3254; FTS 835-3254.

SUPPLEMENTARY INFORMATION: The 1977 amendments to the Clean Air Act ("1977 Act") established under part D of title I an attainment date of December 31, 1982, for the primary national ambient air quality standards ("NAAQS") for nonattainment areas. Section 172(a)(1); 42 U.S.C. § 7502(a)(1) (1983).[1] The 1977 Act also allowed states with nonattainment areas to apply for an extension of the attainment date for certain ozone and carbon monoxide areas to as late as Decemer 31, 1987. However, an area that received an extension was to reach attainment as expeditiously as practicable, even if that date preceded December 31, 1987. Section 172(a)(2). To receive an extension, a state needed to demonstrate that attainment by 1982 was not possible despite implementation of all reasonably available control technology ("RACT"). *Id.* During the interim, the state was required to demonstrate reasonable further progress ("RFP") towards attainment, including such emission reductions "as may be obtained through the adoption, at a minimum, of reasonably available control technology." Section 172(b)(3). In section 171(1), RFP is defined as the annual incremental reductions in emissions that are sufficient to provide for attainment of the NAAQS by the date required by section 172(a), i.e., "as expeditiously as practicable, but not later than December 31, 1987." Therefore, since RFP is accomplished through implementation, at a minimum, of RACT, RACT must be implemented as expeditiously as practicable.

In 1978, the Commonwealth of Massachusetts began to develop its ozone SIP under the authority of the Massachusetts Department of Environmental Quality Engineering ("DEQE"). Massachusetts received partial approval of its initial part D ozone SIP on September 16, 1980. 45 FR 61293. At that time, EPA approved Massachusetts' request for an extension of the attainment date for ozone until 1987. *Id.* at 61293, 61294. EPA also approved a specific regulation governing "automotive surface coating," which established the final compliance date for controlling VOC emissions through RACT as December 31, 1985. *Id.* at 61295. GM-Framingham was the only such facility in Massachusetts. The 1985 date was selected as part of a national compliance plan for automobile manufacturers that GM negotiated with the State and Territorial Air Pollution Program Administrators ("STAPPA"). *Id.*; Technical Support Document, March 3, 1988, at 2.

Once EPA granted the extension beyond 1982, Massachusetts was required to submit a demonstration that the Boston nonattainment area would meet the ozone standard as expeditiously as practicable, and would achieve in the interim RFP increments, including those achievable through RACT. Massachusetts submitted its demonstration and EPA approved it on November 9, 1983. 48 FR 51480, 51481. The demonstration showed that the Boston nonattainment area would attain the NAAQS for ozone by December 31, 1985. *Id.* Massachusetts' showing that the Boston area could practicably attain the standard by the end of 1985 necessarily fixed that date as the statutorily-required attainment date for that area since section 172(a)(2) required that the date be as expeditiously as practicable, but not later than December 31, 1987.

EPA announced a policy on October 20, 1981, ("1981 Policy") recognizing that deferral of the VOC-rule compliance date for automobile assembly plant paint shop operations might be necessary. 46 F.R. 51386. EPA stated that time was needed to allow further development of surface-coating technology, specifically the basecoat/clearcoat ("BC/CC") process. This additional time, EPA believed, would lead to more cost-effective compliance with the ozone standard. *Id.* at 51387.

The 1981 Policy provided that when a state submits a SIP revision that assures continued compliance with sections 110 and 172 of the 1977 Act, 42 U.S.C. 7410

[1] Congress again amended the Clean Air Act on November 15, 1990. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. Except as expressly stated otherwise in this notice, all references herein relate to the Act as it existed before the 1990 amendments since EPA's disapproval of the SIP revision occurred before that date.

and 7502, EPA would approve the revision as being as expeditiously as practicable. *Id.* During the period for developing new surface-coating technology, the source would not be required to meet interim emission limitations. The 1981 Policy, however, also provided that the extension should not interfere with the state's RFP toward attainment. Beyond that, under the 1981 Policy, the state had the burden of demonstrating that an extension would not interfere with attainment of the NAAQS as expeditiously as practicable. The 1981 Policy stated that in instances where the revised SIP would be in compliance with these criteria, EPA would approve revisions calling for compliance by the end of 1986 or, where demonstrated necessary, by 1987. *Id.*

In July 1982, and again in November 1984, GM, through letters to the Massachusetts' DEQE, sought an extension of the final compliance date until December 31, 1987. In each instance, GM proposed compliance by developing an abatement program on the lacquer lines. Both times, GM failed to follow through and complete the process for obtaining such an extension; Massachusetts did not submit either request to EPA. It was not until June 7, 1985, that GM first proposed using the BC/CC process at the Framingham plant. GM requested a compliance-date extension until December 31, 1987, so that it could construct a new paint shop utilizing the BC/CC process. The existing paint shop would then be closed. On August 7, 1985, GM presented Massachusetts with an application for a construction permit for the new facility. Massachusetts held a public hearing on December 16, 1985, and approved an extension for the existing paint shop until August 31, 1987.

Massachusetts submitted the SIP revision to EPA on December 30, 1985, one day before the compliance date that the Massachusetts SIP required. The State failed, however, to demonstrate that the extension for GM would not interfere with the Boston nonattainment area's attainment date of December 31, 1985, or that it had been impracticable for GM to comply by that date.

On December 2, 1986, EPA proposed to disapprove the SIP revision. 51 FR 43394. In July 1987, GM closed the existing paint shop and opened the new paint shop facility with the BC/CC system. In May 1988, EPA found the Massachusetts SIP substantially inadequate to attain the ozone NAAQS and called for the State to revise the SIP in accordance with section 110(a)(2)(H) of the 1977 Act. EPA took final action on September 16, 1988, disapproving the extension on the dual bases that the Massachusetts DEQE and GM failed to show (1) that the earliest practicable time for implementing RACT was August 31, 1987, and (2) that the extension would not interfere with the achievement of RFP in accordance with the demonstrated RFP "line," thereby preventing the Boston nonattainment area from achieving attainment by the required 1985 date. 53 F.R. at 36011. Five additional factors supported these two bases. *Id.* at 36011–12.

GM now contends that EPA: (1) Presented an inappropriate statement of purpose in the final action; (2) acted arbitrarily and capriciously by selectively considering evidence and failing to address specific comments; (3) ignored the "true" attainment deadline of December 31, 1987, and imposed the "speculative" deadline of December 31, 1985; (4) ignored the provisions of the 1981 Policy; and (5) acted inconsistently with previous actions for other nonattainment areas by disapproving the Massachusetts SIP revision request.

Criteria for Reconsideration

GM seeks administrative reconsideration of the final rule pursuant to the 1977 Act and the Administrative Procedure Act ("APA"). CAA 307(d)(7)(B), 42 U.S.C. 7607(d)((7)(B); APA, 5 U.S.C. 553(e). SIP revision actions are not one of the actions enumerated in section 307(d)(1); therefore, section 307(d)(7)(B) does not apply to administrative review of SIP revision actions. However, EPA may administratively review this action under § 553(E) OF the APA.[2] The criteria for evaluating petitions under the APA are essentially the same as those for section 307(d)(7)(B). See Standards of Performance for New Stationary Sources: Stationary Gas Turbines; Denial of Petition to Revise, 45 FR 81653, 81653–54 (Dec. 11, 1980).

Discussion

Issue 1: GM contends that the stated purpose in the disapproval is not valid. The statement of purpose provides: "The intended effect of this action . . . is to ensure reasonable further progress towards the attainment of the ozone standard by the applicable deadline of December 31, 1987, as required under section 172 of the [1977] Act." 53 FR at 36011. GM claims that the purpose is invalid because the December 31, 1987 deadline expired nine months prior to publication of the action. GM also asserts that EPA's true purpose in disapproving the extension was to aid EPA's enforcement action against GM for failure to comply with the applicable emission limits by the end of 1985.

EPA's main goal in finalizing the rule was to complete the regulatory action in accordance with the requirements of the 1977 Act. An active SIP revision request was pending before the agency and EPA was under a duty to act. Section 110(a)(3)(A). EPA was faced with two options: approval or disapproval of the request. *Id.* EPA could not ignore the request. Moreover, although the attainment deadline had passed, the goals of achieving RACT and the reductions projected by the RFP line were not then dismissed; these requirements are ongoing and have independent force under section 172(b)(3) of the 1977 Act. They do not lose their relevance or otherwise disappear simply because the area as a whole did not attain the NAAQS by the attainment deadline.

EPA denies that it published this final rule solely to bolster the enforcement action against GM. EPA's action was to codify the disapproval as a rule, in accordance with the Act's requirements. The fact that the disapproval effectively reaffirmed the legal enforceability of the initial 1985 compliance date does not mean that EPA was seeking specifically to aid the enforcement action.

Issue 2: GM asserts that EPA, in its denial of the SIP revision request, (a) unjustly ignored evidence that the Boston nonattainment area substantially complied with its RFP schedule for 1985, 1986, and 1987; (b) improperly relied on exceedances and violations of the ozone NAAQS in the Boston nonattainment area; and (c) improperly failed to use ozone transport data in its determination.

EPA first will clarify the concepts of RFP, attainment and exceedances. An RFP demonstration is an analysis of the extent to which actual VOC emissions are projected to decrease over time in order to reach attainment of the ozone NAAQS by the prescribed attainment date. RFP is the path by which attainment is to be reached. Section 172(b)(3) sets forth the RFP requirements. A state must submit a demonstration of how it will achieve RFP towards attainment. If it provides the necessary interim reductions to achieve attainment by the target date, EPA approves it. As each year passes, the state submits its RFP reports, indicating to what extent it has met the RFP milestones set in the demonstration. Success is gauged through comparison of actual VOC emissions with the

[2] Section 553(e) provides that an agency "shall give an interested person the right to petition for the issuance, amendment or repeal of a rule."

projected emissions in the EPA-approved RFP demonstration.

While RFP concerns reductions in VOC emissions, NAAQS attainment concerns the amount of ozone in the air within a given area as a result of actual emissions. These are two distinct methods of measurement, each measuring different substances.

An exceedance occurs when the concentration of ozone in the ambient air is higher than the concentration level specified by the ozone NAAQS. Because they measure ambient ozone concentrations, exceedances are related directly to attainment, not RFP. However, RFP and exceedances are related. A history of exceedances after the attainment date may indicate that the initial RFP demonstration was inadequate to achieve attainment.

When seeking a SIP revision, therefore, a state may be required to make two demonstrations: (1) That the nonattainment area did not violate the RFP milestones during the interim period before the attainment date, and (2) if the attainment date has been reached, that the nonattainment area is not experiencing exceedances adding up to a violation of the ozone NAAQS.[3] Either a failure to achieve projected reductions according to the approved RFP demonstration schedule or failure to attain the NAAQS by the attainment deadline will prohibit an uncompensated relaxation of the SIP unless the state accounts for the relaxation in a revised RFP and attainment demonstration that meets the requirements of the 1977 Act.

Issue 2(a): GM asserts that EPA falsely concluded that the Boston nonattainment area did not meet its 1985, 1986, and 1987 RFP attainment goals. GM argues that an EPA publication "specifically states that a state will be considered to be out of compliance with its RFP schedule only where there are 'deviations of more than 5% from the defined RFP schedule.' " GM Petition for Reconsideration, at 13, citing EPA, Workshop on Requirements for Non-Attainment Area Plans, 202 (1978). GM contends, therefore, that the Boston nonattainment area did reach its 1985 attainment goal because its emissions deviated less than 1% from the RFP attainment target.

First, EPA notes that the RFP data for 1986 and 1987 are irrelevant because they do not relate to whether the SIP revision would interfere with the Boston-area attainment deadline of December 31, 1985. Since the State did not submit any other RFP or attainment demonstration extending the RFP schedule and attainment deadline beyond 1985 and reconciling that with the GM compliance date extension, there is no basis for using the 1986 and 1987 RFP data.

Beyond that, GM mischaracterizes the Workshop language. The discussion in that document concerned the RFP reporting requirement and its purpose of pinpointing obstacles that prevent an area from meeting its RFP milestones. Workshop, at 202. RFP milestones are interim goals set in an RFP demonstration for the years preceding the attainment date. They are distinguishable from the RFP target attainment date, which is the final date for attainment of the ozone NAAQS. Significant deviations from the interim milestones indicate severe problems with ultimately achieving the emission reductions that the RFP demonstration shows are necessary to attain by the attainment date. The Workshop document lists available corrective measures to be taken in order to meet the RFP line once problems are identified. *Id.* at 184.

GM excises the quote from a subsection of the Workshop in which EPA discusses utilizing the RFP report to identify problems that indicate control strategy and implementation problems "so that they can be resolved without jeopardizing attainment by the prescribed date." *Id.* at 202. One such problem, the report continues, "is simply failing to obtain sufficient actual emission reductions to meet the specific RFP milestone. Here we are talking about deviations of more than 5% from the defined RFP schedule." *Id.* EPA does not state that a nonattainment area is deemed "out of compliance" only when its emissions deviate more than 5% from the schedule. Rather, EPA indicates that deviations of this sort may indicate fundamental control strategy or implementation problems, requiring a reevaluation of the entire RFP demonstration.

GM's leap in logic to the premise that deviations of less than 5% mean that the area is in compliance with its RFP milestones is incorrect. In the document, EPA does not address the meaning of smaller deviations. However, EPA may reasonably conclude that although smaller deviations may not require an RFP demonstration to be reevaluated, they do prevent any relaxation of that schedule.

Moreover, even if this language did indicate that deviations of less than 5% indicate compliance, the 5% deviation still refers only to RFP milestones, not to the RFP attainment target date. The Workshop clearly makes the point that deviations are to be identified at the RFP milestones so that "they can be resolved without jeopardizing attainment." *Id.* The attainment date itself is a strict deadline. Thus, even if the Workshop language accorded a 5% margin for compliance with the interim 1983 and 1984 RFP milestones for the Boston nonattainment area, it cannot be read to authorize such a margin for 1985, the attainment year in the Boston-area RFP and attainment demonstration.

Issue 2(b): GM contends that, in rejecting the SIP-revision request, EPA improperly relied on exceedances and violations of the ozone standard in 1985, 1986, and 1987, and on the 1988 SIP call. GM's complaint centers on an argument that, under section 110(a)(2), EPA had only four months to consider the action after GM presented the SIP-revision request and that, if EPA took longer, it could not consider evidence received outside that four-month period. Thus, since GM submitted the SIP-revision request on December 30, 1985, EPA should only rely on information it had before April 30, 1986.

GM points to EPA's August 17, 1988 Addendum to the March 3, 1988 Technical Support Document ("TSD"), and the December 2, 1986 Notice of Proposed Rulemaking ("NPR"). In its TSD dated August 17, 1988, EPA noted that the Agency's Region I made a finding of SIP inadequacy "[i]n light of continuing monitored exceedances of NAAQS." TSD at 1. In the NPR, EPA pointed out that Massachusetts "experienced 14 days of violations of the ozone standard" in 1985. 51 FR at 43395. EPA continued to say that the number of ozone exceedances and their magnitude "is some evidence that Massachusetts [would] continue to experience violations of the standard beyond December 31, 1987." *Id.*

In *General Motors Corp.* v. *United States,* — U.S. ——, 110 S.Ct. 2528 (1990), the Supreme Court held that the four-month deadline applies only to action required on the original SIP, not to SIP revisions. Therefore, the only statutory "deadline" controlling EPA's action is that imposed by the APA, 5 U.S.C. 555(b), which requires agencies to conclude matters "within a reasonable time."

[3] A nonattainment area is in violation of the ozone NAAQS if the average expected exceedance rate per year, averaged over a three-year period, exceeds 1.0. The expected exceedance rate for one year is based on the number of exceedances that occur at one monitor plus a factor based on the number of days during which no monitoring occurred. To calculate the average expected exceedance rate, the average exceedance rate for each of the most recent three years is added together and divided by three.

Even if EPA had acted beyond a statutory deadline, it would have been lawful and appropriate for the agency to consider all relevant data available at the time it acted. As stated in the disapproval, EPA "cannot ignore facts that come to light before final action." 53 FR at 36013. Since changed circumstances may alter what is the best approach to a requested action, any decision EPA makes must be based on all relevant data available as of the date of the decision.

In determining whether to grant a SIP-revision request, EPA may properly evaluate exceedances and the failure to attain the ozone NAAQS. EPA appropriately considered the evidence of exceedances and violations in 1985, 1986, and 1987. These exceedances confirm that the approved RFP demonstration was inadequate. In accordance with that finding, EPA issued a SIP call in May 1988.

If an area has a RFP demonstration that has proven inadequate, EPA requires that any SIP revision request for an uncompensated extension of the attainment date for that area must be supported by a revised attainment demonstration. This is because any SIP or SIP revision must provide for timely attainment and maintenance of the NAAQS. Sections 110(a)(2)(A) & (B), 110(a)(3)(A), and 172 (applicable through section 110(a)(2)(A) & (I).) If a current SIP is defective, the state must submit a revised RFP demonstration, curing those defects before EPA may approve an uncompensated relaxation of the SIP.[4] The State's failure to provide a revised RFP schedule precludes EPA from approving the requested extension of the compliance date.

Issue 2(c): GM argues that since EPA relied on the NAAQS exceedances, it also should have considered ozone transport. GM claims that ozone transported from upwind states caused the exceedances in the Boston nonattainment area. In support, GM cites a Rhode Island SIP approval in which EPA recognized the effect of ozone transport.

In developing and approving the 1982 SIP, Massachusetts and EPA did account for ozone transport. EPA guidance assumed that ambient air entering the State did not exceed the ozone standard of 0.12 ppm so that Massachusetts would not be charged with the burden of compensating for emissions from upwind states. More importantly, it is inappropriate to use ozone transport modeling (and data from ozone monitors near the plant of concern) to evaluate the effect of a single source's, emissions on the state's RFP schedule, because ozone is not emitted; rather, it results from a photochemical reaction involving pollutants emitted from numerous points at many facilities (often well upwind of the ozone concentrations they create) and is therefore difficult to trace and to attribute to any one source such as GM's plant. In fact, it is likely to that the GM emissions contributed to ozone concentrations well downwind of the Framingham facility.

As to Rhode Island SIP, Rhode Island demonstrated that the State would be in attainment but for ozone transport from upwind states. Massachusetts did not present any such demonstration. In fact, after EPA created presumption that 0.12 ppm of ozone was transported from upwind states, Massachusetts was still not in attainment.

Issue 3: GM contends that December 31, 1987 was the actual date for attaining the ozone standard in the Boston nonattainment area and that December 31, 1985 was merely a prediction. GM asserts that Massachusetts had a "right to utilize the RFP schedule for 1985–1987 inorder to reach attainment by the final statutory deadline of Dec. 31, 1987." GM cites 40 CFR 52.1127 (1989) and a response to a motion for summary judgment that EPA filed in another case in support of a 1987 deadline.

GM misinterprets § 172(a)(2) and EPA's various statements that Massachusetts received a "1987 extension." This phrase means that a nonattainment area has received an extension beyond 1982 under section 172(a)(2) of the 1977 Act. The extension may last until 1987; however, if a state demonstrates that attainment can practicably be achieved earlier, the extension reaches only to that earlier date. That is because section 172(a)(2) sets the attainment date for areas with extensions beyond 1982 as the date that is "as expeditiously as practicable but not later than December 31, 1987." Therefore, a state needs to make two separate showings. First, by 1979 a state must have shown that it was entitled under section 172(a)(2) to receive an extension beyond 1982. Public Law No. 95–95, 129(c), 91 Stat. 685, as amended by Public Law 95–190, section 14(b)(4), 91 Stat. 1393 (not codified). Then, by 1982, the state must have submitted a demonstration showing how it would reach attainment through RFP increments including the reductions achievable by implementing RACT as expeditiously as practicable. *Id.; see City of Seabrook* v. *E.P.A.*, 659 F.2d 1349 (5th Cir. 1981).

Massachusetts received a "1987 extension" in 1980. In 1982, Massachusetts submitted a demonstration showing that the Boston nonattainment area could reach attainment, moving as expeditiously as practicable, by December 31, 1985. In accordance with Massachusetts' demonstration, EPA established the attainment date as December 31, 1985, for the Boston nonattainment area. 48 FR at 51481, 51483.

GM relies on 40 CFR 52.1127, which establishes the "latest dates" by which the ozone NAAQS must be attained in Massachusetts. Based on the September 16, 1980 and June 30, 1981 **Federal Register** notices that grant an extension beyond 1982, § 52.1127 provides that the attainment date for ozone is December 31, 1987. EPA did neglect to amend this section and § 52.1122(d) after the 1983 rulemaking, 48 FR 51480, in which EPA approved the 1985 attainment date. However, this inadvertent failure does not affect the applicability of the 1985 attainment date. See 48 FR 51480. EPA utilized proper rulemaking procedures in selecting the 1985 date as the applicable attainment date for the Boston nonattainment area and that rule is not nullified simply because EPA did not complete the ministerial task of modifying the pre-existing CFR provisions.

Moreover, one provision of the CFR was modified to reflect the rulemaking of November 9, 1983: 40 CFR 52.1123 (1989). Section 52.1123 provides that EPA approved the Massachusetts SIP and that it "satisfies all requirements of part D* * *" This provision effectively codified EPA's ratification in the 1983 rulemaking of the 1985 attainment date in Massachusetts' part D SIP for the Boston area. The 1983 rulemaking and that codification supersede any previously promulgated references to a 1987 attainment date.

In the pending action *Conservation Law Foundation* v. *Commonwealth of Massachusetts, et al.*, (Civil Action No. 87–0651–WD), EPA stated that, in accordance with section 172(a)(2) of the 1977 Act, it granted Massachusetts an extension of its attainment deadline until December 31, 1987. This is consistent with the statutory language and with EPA's actions in the present case. EPA did grant a "1987 extension" in 1980 pursuant to section 172(a)(2). However, the 1983 rulemaking procedure by which EPA approved Massachusetts' demonstration of the December 31, 1985, attainment date for

[4] The only conceivable exception to this principle might be where the initial SIP provision reflected a clear mistake by EPA and the state, such that it would be absurd or irrational not to allow the uncompensated SIP relaxation.

the Boston nonattainment area under section 172(a)(2) subsequently limited the time period for attainment.

Issue 4: GM argues that, under the 1981 Policy, it was entitled to receive an extension until December 31, 1987. GM raises numerous concerns about EPA's interpretation of the 1981 Policy. Each concern is addressed below.

Issue 4(a): GM contends that EPA should not have used specific time frames, as discussed in a policy statement (" Policy"), for analyzing whether a requested compliance-date extension was expeditious. In the Policy, EPA provided that expeditiousness could be demonstrated by examining when the source was first put on notice of the requirement and the time period that elapsed between that notice and the request for extension. EPA determined that "expeditious" was three years, but perhaps longer for automobile assembly plant operations. GM asserts that the 1986 Policy cannot override the 1981 Policy.

First, EPA notes that the 1981 and 1986 Policies are not law, but rather guidance tools for the agency in applying the 1977 Act. *See City of Seabrook* v. *E.P.A.*, 659 F.2d 1349 (5th Cir. 1981) (policy statement is not a rule; it is merely interpretive); *cf. Morton* v. *Ruiz*, 415 U.S. 199, 236–37, 94 S.Ct. 1055, 1075 (1974) (even an interpretive rule has no binding effect and is not entitled to deference when inconsistent with statutory intent). The policies were implemented neither as regulations nor as adjudications and were not intended to be enforceable.

EPA issued the 1981 Policy in light of the goals of the 1977 Act and with the intention that it would work with the Act's requirements of demonstrating attainment as expeditiously as practicable and providing for RFP. Section 172(a)(2) and (b)(3). The time periods established in the Policy were meant to supplement and further define the 1981 Policy's "expeditious" provision. Thus, the 1981 Policy and the 1986 Policy are not inconsistent, but rather work together to define "expeditious."

Issue 4(b): GM asserts that a request to implement the BC/CC system before December 31, 1987, is presumptively expeditious under the 1981 Policy. GM cites policy language that states EPA will approve any state-submitted schedule modifications extending compliance to 1986 and that EPA recognizes some sources will need until 1987.

To the extent any presumption exists, it is invoked only if the request involves a compliance date by or before the end of 1986. The extension that GM sought extended well into 1987.

Moreover, the presumption exists only to the extent the industry needed to develop the new technology: "EPA will approve any State-submitted schedule modifications * * * for topcoat operations to the end of 1986 to allow for further development of coating technology." 46 FR at 51387 (emphasis added). GM did not seek time to develop BC/CC technology but rather time to construct a new paint shop that would utilize that technology. At the time of GM's request in 1985, several GM plants were already using the BC/CC process. In addition, GM sought extensions for other GM paint shop facilities shortly after the 1981 Policy was created.

Beyond that, this one sentence does not act independently of the remainder of the 1981 Policy nor independently of the 1977 Act. The 1981 Policy provides that SIP revisions need to assure continued compliance with sections 110 and 172 of the 1977 Act. Any revision of a SIP, therefore, is acceptable only if it provides for the implementation of RACT "as expeditiously as practicable" and meets all other requirements of those two sections.

In its analysis of whether GM proceeded "as expeditiously as practicable," EPA could appropriately consider why the SIP revision request was not made earlier. GM had been aware of the need to meet RACT at the Framingham facility for over six years (from 1979 until 1985) by the time it sought this revision. Thus, it had already received well beyond three years to comply even before the extension that it sought for 1985 to 1987. More importantly, the 1981 Policy had been in place for almost four years. During this time, GM took no action on implementing the BC/CC process at the Framingham paint shop. Nor did GM adopt and install any other topcoat system that could achieve the emission reductions required for the 1985 attainment deadline. From this information, EPA could determine that GM and Massachusetts have not provided for the implementation of RACT as expeditiously as practicable at the Framingham paint shop subject to the 1985 compliance date. As EPA stated in the disapproval and in the TSD dated March 3, 1988, GM's failure to act earlier in adopting the BC/CC process at the Framingham facility suggests its inability to comply by the 1985 deadline "was not due to any difficulties inherent in the applicable emissions limitations, but to tardiness in attempting to meet them." 53 FR at 36012.

Issue 4(c): GM complains that EPA improperly read into the 1981 Policy a requirement that Massachusetts prove cost-effectiveness. At one point the 1981 Policy provides that the delay allowed by the policy "may ultimately result in more cost-effective compliance." 46 FR at 51387. Later, however, in discussing the delay to "allow for further development of coating technology," the policy provides that the delay "will allow more cost-effective compliance techniques to be used." *Id.*

While the 1981 Policy does not explicitly call for proof of cost-effectiveness, cost-effective control is one of the policy's goals. Moreover, the cost-effectiveness is an important goal of the 1977 Act.

As EPA stated in the final notice, a state must demonstrate that RACT would be implemented as expeditiously as practicable under the extension. 53 FR at 36012. Therefore, in order to receive an extension, the State must demonstrate the impracticability of meeting the initial deadline. If a cost-effective control technology existed so that the 1985 deadline could have been met, Massachusetts was required to demonstrate that there would be some added benefit, such as improved cost-effectiveness, of waiting to install some other control system. As stated in the disapproval, GM made no demonstration as to why measures available before 1985 were less cost-effective than other measures that could be applied only later to the paint shop. *Id.* All GM has shown is that it preferred not to apply any measures to the existing paint shop, but instead to build a new one. That does not satisfy the section 172(b) requirement to apply RACT on the existing plant as expeditiously as practicable.

Issue 4(d): GM raises concerns about a conversation that occurred in 1986 between Dave Salman and Cynthia Greene, two EPA employees. In that conversation, Salman was asked when he anticipated that extension requests would be submitted under the 1981 Policy. Salman responded that he expected the requests would have been submitted in 1982. GM contends that this conversation served as technical support that was not communicated to the public.

First, EPA states that the telephone conversation did not concern any technical issue. Rather, the conversation involved an inquiry which was part of the Region's investigation into what the "expeditiousness" requirement of § 172 and the 1981 Policy means. Moreover, GM mistakes the importance EPA placed on that telephone conversation. EPA has never placed a 1982 submittal deadline on GM-Framingham. The 1981

Policy is merely a policy statement and, therefore, not strictly interpreted as would be the law. The telephone conversation holds even less import. Ms. Greene was merely seeking information to help in the Region's deliberation as to what was meant as "expeditious" under the 1981 Policy. Although EPA refers to this conversation in its TSD dated June 16, 1986, EPA does not conclude that the SIP-revision request is not expeditious just because it was not submitted in 1982.

EPA has demonstrated, in other circumstances, that it has not adopted such a strict rule. In 1984, Virginia and Delaware separately petitioned the agency for extensions under the 1981 Policy. In 1985, EPA granted the Virginia extension and proposed granting the Delaware extension. 50 FR 26202 (June 25, 1985); 50 FR 18693 (May 2, 1985). Although EPA recently reproposed the Delaware extension, suggesting disapproval, the earlier proposal indicates that EPA did not impose a 1982 request deadline. 55 FR 38814 (Sept. 21, 1990).[5]

Issue 4(e): GM contends that in the final action EPA wrongly included all waterborne coatings within the preferred "high solids, low solvent coatings" category. GM asserts that waterborne coatings are distinct and that the 1981 Policy recognized the desirability of developing high solids, low solvent coatings as an alternative to waterborne coatings.

In the final action, EPA inadvertently failed to clarify that the agency's reference to waterborne technology went solely to waterborne basecoat, solvent-based clearcoat technology; EPA was not considering the waterborne coating technology described in its Control Techniques Guideline ("CTG").[6] In the final action EPA stated that the plans for the new paint shop did not provide for the additional drying systems required for "waterborne coatings." 53 FR at 36013. As a reason for using this failure as a factor for disapproval, EPA referred to a provision in the 1981 Policy, indicating that new systems be capable of adopting "the new generation of low-solvent coatings." *Id.*

EPA agrees that under the 1981 Policy waterborne coatings were not included in the category of high solids, low solvent coatings. See 46 FR at 51387. However, the 1981 Policy was prepared before the advent of waterborne basecoat, solvent-based clearcoat technology; the 1981 Policy referred only to the waterborne coating technology described in EPA's CTG. By contrast, EPA believed at the time of the SIP-revision disapproval (and continues to believe) that waterborne basecoat, solvent-based clearcoat technology is part of "the new generation of low solvent coatings" that new automobile coating systems should be able to accommodate. Moreover, GM has offered no reason that EPA should not have considered waterborne basecoat, solvent-based clearcoat technology in its assessment of what the new paint shop could accommodate.

However, even if EPA should not have considered whether the new paint shop could accommodate waterborne basecoat, solvent-based clearcoat processes, the elimination of this factor would have no effect on the outcome of EPA's disapproval. As stated above, EPA found for other reasons that Massachusetts failed to demonstrate that the paint shop was implementing RACT as expeditiously as practicable. Moreover, Massachusetts failed to submit a new RFP demonstration accounting for the compliance data extension. Therefore, EPA's two major bases for disapproval would not be affected by any error in interpreting what EPA intended to include as waterborne technology in the 1981 Policy.

Issue 4(f): GM's final contention as to the 1981 Policy is that if EPA could grant relief through an enforcement mechanism (in this instance, a delayed compliance order), EPA must be able to grant the same relief through the 1981 Policy.

During the comment period, the DEQE raised this issue and EPA responded in the Final Action. 53 FR at 36013. EPA distinguished a delayed compliance order ("DCO"), see section 113, 42 U.S.C. 7413, on the ground that it provides a heightened level of control that is not required in the SIP revision process. In addition, at the time of EPA's consideration of the state submittal, the 1977 Act established an enforcement process for source violations of an interim requirement of the DCO. If the DCO and SIP revision sections entitled a party to the exact same relief, there would have been no need to include both in the Act.

The fact that one method of receiving an extension of the compliance date is available does not mean that the extension should be granted no matter how it is requested. The state must comply with the demands of the provision under which it seeks relief—in this case, the statutory provisions governing SIPs and SIP revisions in nonattainment areas.

Issue 5: GM contends that in proposing the final action, EPA acted inconsistently with the proposed approval for the GM-Wilmington facility under the Delaware SIP. 50 FR 18693. However, in its Supplement to its Petition for Reconsideration, GM notes the Agency's September 21, 1990, proposed disapproval of the Delaware topcoat rule and complains that this is a "clear example of the abandonment of the published 1981 Policy." Supplemental Statement of General Motors Corporation in Support of Petition for Reconsideration, at 2 (February 19, 1991).

In the September 21, 1990 reproposal of the GM-Wilmington rule, 55 FR 38814, EPA based its reversal on a finding that Delaware did not have available the growth allowances on which EPA initially based its approval of the compliance date extension. EPA was not interpreting the 1981 Policy in this determination, but rather basing its disapproval on Delaware's failure to demonstrate that the extension would not interfere with the attainment and maintenance of the ozone standard or with RFP toward timely attainment. *Id.* at 38815. EPA's decision was based on an issue independent of the 1981 Policy.

GM argues that a reproposal of the Delaware rule is not the proper remedy: "[t]he remedy for [EPA's] inconsistency is not to undo proper actions taken earlier * * *." GM assumes that the 1985 Delaware proposal was proper. GM shows no basis for that assumption and EPA has demonstrated a sufficient reason for now proposing disapproval. EPA believes that it is now undertaking the proper action with respect to GM-Wilmington, and that the action in GM-Framingham is not inconsistent with this action.

Issue 6: On February 19, 1991, GM filed a "Supplemental Statement of General Motors Corporation in Support of Petition for Reconsideration." In its supplemental statement, GM raises contentions concerning EPA's September 1990 proposed disapproval of the Delaware topcoat compliance date extension. EPA considers these contentions in Issue 5, above.

[5] Nor was the recently proposed disapproval based on a missed 1982 deadline. Rather, EPA learned that Delaware did not have available the growth allowances on which EPA relied in proposing to grant the compliance-date extension. *Id.* at 38814, 38815.

[6] However, EPA did indicate in at least one document that the agency was referring to waterborne basecoat, solvent-based clearcoat technology. In its TSD dated June 16, 1986, EPA specifically stated that the request could not be approved because the system did not provide the extra drying vestibule needed for "[w]ater-based basecoat/clearcoat systems." TSD at 4.

GM also presents numerous documents that were not submitted or considered during the comment period and requests that EPA now consider and supplement the record with these documents. All of these documents were available at the time that EPA was considering Massachusetts' request for a compliance date extension. None, however, were documents on which EPA relied. Therefore, EPA need not consider these documents nor supplement the record with them now.

EPA is reviewing this action pursuant to the Administrative Procedure Act ("APA"), 42 U.S.C. 553(e), which requires an agency to allow a party "to petition for the issuance, amendment, or repeal of a rule." [7] The standard for review for such a petition is whether the petitioner has presented new information that warrants reconsideration of the rule. 51 FR 15885 (April 29, 1986); *see generally Oljato Chapter of Navajo Tribes* v. *Train*, 515 F.2d 654 (D.C. Cir. 1975). Congress specifically adopted this standard when it amended the Clean Air Act in 1977. Section 307(d)(7)(B). Therefore, although section 307(d)(7)(B) is not applicable by its express terms to the present proceeding, EPA may follow the test set forth in determining whether to review material submitted in a petition for reconsideration. *Cf.* 45 FR 81653–54.

Section 307(d)(7)(B) requires the Administrator to convene a proceeding for reconsideration of a rule if the person requesting such action can demonstrate that (1) it was impracticable to raise the issue during the public comment period, or (2) that the issue arose after the period for public comment. Moreover, the party seeking reconsideration must show that the issue is of central relevance to the outcome of the rule.[8]

With the exception of the Delaware notice, which the Agency addresses in Issue 5, above, the documents that GM requests EPA to consider were clearly available during the public comment period. These documents date to the early and mid 1980's. Hence, the issues they raise did not arise after the period for public comment and are not "new" information that the Agency must review. Furthermore, GM has not made any claim, nor has it attempted to show, that it was impracticable for it to raise these issues during the public comment period.[9]

Finally, EPA notes that GM does not indicate that these documents are of central relevance to the rulemaking proceeding. GM merely states that the documents indicate that EPA "failed to consider all relevant factors" in its disapproval. GM Supplemental Statement, at 1 (Feb. 19, 1991). The fact that Congress modified "relevance" with the word "central" indicates an intent to limit the type of material that is relevant for rulemaking proceedings. The legislative history of the Clean Air Act Amendments of 1977 clarifies the statutory intent: "the agency should include in the record only those documents in its possession which are of genuine material relevance to the rule * * *. These central documents should where necessary cite or summarize, and place in perspective, less relevant documents on which they in turn rely." H.R. Rep. No. 294, reprinted in 1977 U.S. Code Cong. & Admin. News 1077, 1398–1399. This standard logically should apply to an APA-based petition like GM's. Since GM has not met its burden, EPA will not reconsider its decision in light of these documents.

In its supplemental petition, GM also requests EPA to allow it to conduct written and deposition discovery and for EPA to conduct an evidentiary hearing. These requests are inappropriate for the review of a Petition for Reconsideration, therefore, EPA denies the request.

Conclusion

Pursuant to section 553(e) of the Administrative Procedure Act, GM filed a Petition for Reconsideration essentially requesting EPA to repeal the agency's final disapproval of Massachusetts' SIP revision request. EPA has reviewed GM's Petition and has addressed each claim raised. Since EPA has failed to ascertain any ground for modifying its final disapproval of September 16, 1988, 53 FR 36011, the Agency denies GM's Petition in its entirety.[10] Therefore, EPA denies GM's

[7] Section 553(e) provides that "[e]ach agency shall give an interested person the right to petition for the issuance, amendment or repeal of a rule."

[8] The criteria for considering information received in a petition for reconsideration pursuant to 5 U.S.C. 553(e) logically should not be markedly different from those set forth in CAA 307(d)(7)(B). The criteria established in the CAA are based on the policy underlying notice and comment rulemaking; as with the CAA, rulemaking pursuant to the APA is subject to notice and comment procedures. Before an agency adopts a rule, it is generally required to provide notice of and allow comment on the rule so that the public may voice its concerns about the rule.

Since the public is given an opportunity to comment during the rulemaking proceeding, it logically need not be given an endless opportunity to raise issues once the comment period has concluded. Limiting the public's opportunity to comment does not place undue constraint on the public. Moreover, this requirement is necessary in order for the rule to be promulgated and to become effective. (Without a limit on comments, a continuous cycle of comment and response could occur, impeding promulgation of a final rule.) If commentors have insufficient time to discover and research available documents during the initial comment period, they may ask the agency to extend the comment period upon the request of one or more parties. (It is not uncommon for agencies to grant such requests.) Therefore, if an exception must be made for allowing a party to raise issues after the close of the comment period, the burden is properly placed on the party seeking to have those issues considered to demonstrate some valid reason that it did not raise the issue during the comment period.

[9] Again, case law interpreting section 307(d) provides a guide how EPA should implement 5 U.S.C. 553(e). In *Lead Industries Ass'n* v. *E.P.A.*, 647 F.2d 1130, 1183 (D.C. Cir. 1980), the Court applied section 307(d) in finding that a party could not supplement the administrative record with materials it obtained after the rulemaking became final if it could have obtained those materials during the time for public comment. Since the documents that CM now presents to the agency are documents that were available during the rulemaking, GM should not be allowed to request agency review at this later date.

Moreover, courts have allowed post hoc amendment of the record only if the documents were documents required to be in the rulemaking docket pursuant to section 307(d)(3)–(6). In *American Petroleum Institute* v. *Costle*, 609 F.2d 20 (D.C. Cir. 1979), the Court found that "no additional materials—other than those required by the statute and wrongfully omitted by EPA—may be added to the docket after the rule is promulgated." *Id.* at 22. None of the documents that GM seeks to enter into the rulemaking record fall within these categories.

[10] Moreover, although GM has not raised the issue, nothing in the Clean Air Act Amendments of 1990 affects the agency's disapproval of Massachusetts' SIP revision request or GM's Petition for Reconsideration. Clean Air Act Amendments of 1990, Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Although the amendments extend the time for nonattainment areas to attain the NAAQS, they have no effect on past progress that has been made or that should have been made by nonattainment areas. The extended time frame cannot be used to justify a SIP relaxation just because the relaxation affects only an earlier period. The new RACT provision and the savings clause in the amended Act support this reasoning.

First, the amendments expressly preserve the requirement of the 1977 Act that the SIP provide for the implementation of RACT as expeditiously as practicable. Section 172(c)(1). For the GM-Framingham plant, December 31, 1985, was the date for application of RACT that was "as expeditious as practicable." Since the compliance-date extension would allow GM-Framingham to avoid implementing RACT as expeditiously as practicable, it interferes with the RACT requirement under the amended Act. The amendments prohibit EPA from approving control requirements that interfere with any applicable requirement of the Act, including RACT. Section 110(1). Moreover, all classified ozone nonattainment areas (such as the Boston area) must correct or add all RACT required by the 1977 Act. Section 182(a)(2)(A). The RACT provision is evidence that Congress did not intend to override the RACT requirements of the 1977 Act, but rather to insure that they are in place and that more stringent requirements are also implemented in the future.

The savings clause, which is essentially an antibacksliding provision, states that no control requirement that was in effect on the date the amendments were enacted may be modified unless it insures "equivalent or greater emission reductions." Section 193. Congress failed to define the term "equivalent." EPA, therefore, interprets this term to mandate that the SIP provide, at a minimum, for the same amount of reductions during the same

Continued

Petition for Reconsideration in its entirety.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 23, 1991. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental Relations, Ozone, Reporting and Recordkeeping Requirements.

Dated: October 9, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91-25172 Filed 10-22-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6897

[CO-930-4214-10; COC-16101]

Withdrawal of National Forest System Lands for the Protection of Forest Service Campgrounds and a Cave System; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 417.50 acres of National Forest System lands from mining for 20 years to protect campground facilities at two campgrounds and a significant cave system. The lands remain open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

EFFECTIVE DATE: October 23, 1991.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-239-3706.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, for protection of the Forest Service Marble Mountain Cave System and existing campground facilities at Purgatoire and Grape Creek Campgrounds:

Sixth Principal Meridian

San Isabel National Forest

Purgatoire Campground (Formerly Potato Patch Campground)

T. 32 S., R. 69 W., (Protraction Diagram No. 22, accepted May 5, 1965),
Sec. 16, Unsurveyed,
A parcel of land, beginning at a point marked by a ½-inch pipe in the ground, said point being 10 feet west of Station 205 + 48.6 of the North Fork Road Design Contract dated June 27, 1966;
thence due North 10 chains,
thence due West 5 chains,
thence due North 5 chains,
thence due West 20 chains,
thence due South 10 chains,
thence due East 5 chains,
thence due South 5 chains,
thence due East 20 chains to the point of beginning.
A parcel containing 32.50 acres.

Grape Creek Campground

T. 24 S., R. 72 W.,
Sec. 28, S½NW¼SW¼ and W½SW¼ SW¼.
A parcel containing 40 acres.

Marble Mountain Caves

T. 24 S., R. 73 W., (Protraction Diagram No. 21, accepted April 26, 1965),
A parcel of land in sections 14, 22, 23, and 24 located by a metes and bounds survey as follows:
Beginning at the summit of Marble Mountain (corner 1);
thence N. 77° E., 4,752 ft. to corner 2,
thence S. 35° E., 2,640 ft. to corner 3 (cabin),
thence S. 43° W., 3,696 ft. to corner 4,
thence N. 45° W., 5,280 ft. to corner of beginning.
A parcel containing 345 acres.
The areas described aggregate approximately 417.50 acres of lands in Las Animas and Custer Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: October 17, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-25478 Filed 10-22-91; 8:45 am]

BILLING CODE 4310-JB-M

FEDERAL MARITIME COMMISSION

46 CFR Part 550

[Petition No. P3-91; Docket No. 91-41]

Application of Trailer Marine Transport Corporation Under Section 35 of the Shipping Act, 1916; Correction

AGENCY: Federal Maritime Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Maritime Commission is correcting an error in its final rule in Docket No. 91-41, Application of Trailer Marine Transport Corporation Under Section 35 of the Shipping Act, 1916; which appeared in the **Federal Register** on October 9, 1991 (56 FR 50824). This rule added a new exemption for carriers providing port-to-port service in the Puerto Rico and Virgin Islands domestic offshore trades.

EFFECTIVE DATE: October 9, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: On October 9, 1991 (56 FR 50824) the Commission granted the application of Trailer Marine Transport Corporation ("TMT") for an exemption under section 35 of the Shipping Act, 1916, 46 U.S.C. app. 833a. Through an oversight the Final Rule did not grant the entire relief requested by TMT and intended by the Commission. Accordingly, the final rule should be corrected as follows:

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time frame in which it would have been reasonable for such reductions to have been achieved in the area governed by the SIP—but no later than the date EPA acts on the SIP revision. As explained in this notice, EPA has found that for the Boston nonattainment area the time frame for reductions was the period before December 31, 1985, since GM itself reasonably could have achieved the relevant reductions at its Framingham facility at reasonable cost during that period. As explained in this notice, Massachusetts did not propose how it would provide for equivalent reductions during that time period. Thus, this SIP revision would violate the savings clause because it produced a net relaxation during that applicable time frame.

The savings clause also preserves the RFP requirements in the Massachusetts SIP. *Id.* Section 193 provides that any regulation or rule issued by EPA prior to enactment of the 1990 amendments will remain in effect unless inconsistent with the terms of the amended Act. Although the amendments provide new RFP requirements, these have no effect prior to enactment of the amendments. Nothing in the amended Act expressly or impliedly affects the RFP requirements that applied through existing SIPs to nonattainment areas prior to the 1991 Amendments.

On page 50827, in column one, in § 550.1, paragraph (e) is corrected to read as follows:

§ 550.1 Exemptions.

* * * * *

(e) Carriers providing port-to-port transportation between the United States and Puerto Rico or the U.S. Virgin Islands, or between Puerto Rico and the U.S. Virgin Islands, may file on one day's notice any change to an existing carrier rule, regulation or note that reduces the shipper's cost of transportation or results in no change in the shipper's cost of transportation, and any new carrier rule, regulation or note that reduces the shipper's cost of transportation; provided, however, that such carriers must comply with those provisions of the Intercoastal Shipping Act, 1933, and the Commission's regulations that pertain to any "general decrease in rates."

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-25378 Filed 10-22-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Part 352

Acquisition Regulation; Publication

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule; amendment.

SUMMARY: The Department of Health and Human Services is finalizing and amending the interim rule with request for comments published in the **Federal Register** on July 24, 1991 (56 FR 33881-33882). The interim rule amended the Department of Health and Human Services Acquisition Regulation (HHSAR), title 48, Code of Federal Regulations, chapter 3, to add a contract clause, "Publications and Publicity," which will be included in all solicitations and resultant contracts.

EFFECTIVE DATE: October 23, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Lanham, Division of Acquisition Policy, telephone (202) 245-8890.

SUPPLEMENTARY INFORMATION: The interim rule published on July 24, 1991 requested comments from interested parties. One comment was received from a source outside the Department. The commenter expressed concern regarding the term "accepted channels," as used in the phrase "and make available through accepted channels," in the first sentence of paragraph (a) of the clause, and requested the term be defined. After careful analysis, the Department has decided to remove the phrase from the clause for purposes of clarity and ease of interpretation.

The "Publications and Publicity" clause has been determined to be necessary to allow publication of work accomplished under a departmental contract while requiring that the contractor acknowledge that the publication does not necessarily reflect the views of the Department, nor does it imply endorsement by the Department.

The Department of Health and Human Services certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.); therefore, no regulatory flexibility statement has been prepared. Furthermore, this document does not contain information collection requirements needing approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.).

The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Part 352

Government procurement.

Accordingly, the Department of Health and Human Services amends 48 CFR chapter 3 as set forth below.

Dated: October 16, 1991.

Terrence J. Tychan,

Acting Deputy Assistant Secretary for Management and Acquisition.

Accordingly, the interim rule amending 48 CFR part 352 which was published at 56 FR 33881-33882 on July 24, 1991 is adopted as a final rule with the following change.

PART 352—[AMENDED]

1. The authority citation for part 352 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 352.2—[Amended]

352.270-6 [Amended]

2. In section 352.270-6, the first sentence in paragraph (a) of the clause is amended by removing the comma after the word "contract" and by removing the phrase "and make available through accepted channels,".

[FR Doc. 91-25493 Filed 10-22-91; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 910102-1217]

Atlantic Bluefin Tuna Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of permit expiration; permit application fee.

SUMMARY: NMFS issues this notice to specify the expiration date for all Atlantic bluefin tuna permits as December 31, 1991, and to notify the public of a $20.00 application fee for new or renewed Atlantic bluefin tuna permits. The purpose of this action is to restore the utility of the Atlantic bluefin tuna permit file by purging the inactive vessel records and to recover the administrative costs of permit application processing.

EFFECTIVE DATE: October 18, 1991.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508-281-9101.

SUPPLEMENTARY INFORMATION: Regulations that govern the Atlantic bluefin tuna fishery, at 50 CFR part 285, are authorized under the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* The ATCA directs the Secretary of Commerce to promulgate such regulations as may be necessary to carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

On October 3, 1991, NMFA issued a final rule that revised § 285.21(e) to authorize the Director, Northeast Region, NMFS to specify a date when a permit expires (56 FR 50061). This notice advises permit holders that all existing bluefin tuna permits in all fishing categories will expire on December 31, 1991. In addition, the final rule authorized NMFS to charge a $20.00 application fee to cover the administrative costs of permit issuance as authorized by § 285.21(k). This fee will be required for all applications received after October 18, 1991.

Other Matters

This action is authorized by 50 CFR part 285 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

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

Dated: October 17, 1991.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-25475 Filed 10-18-91; 2:49 pm]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 910938-1238]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Termination of emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) has determined that an emergency no longer exists in groundfish fisheries in the Gulf of Alaska. By emergency regulation, the Secretary had postponed the opening of the fourth quarter directed pollock fisheries in the Gulf of Alaska to ensure adequate consideration of the effects of the fishery on the environment, particularly with respect to Steller sea lions, a species listed as threatened under the Endangered Species Act (ESA). A section 7 consultation and an environmental assessment have been prepared, and the District Court has ruled to allow the fourth quarter directed pollock fisheries. This notice terminates the emergency interim rule. This action is intended to further the goals and objectives contained in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) and in the ESA.

EFFECTIVE DATE: Effective at 12 noon, Alaska local time (A.l.t.), October 21, 1991.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett (Fisheries Management Division, NMFS), (907) 586-7228.

SUPPLEMENTARY INFORMATION: The Secretary determined that an emergency existed in the Gulf of Alaska directed pollock fishery. An emergency interim rule (ER) postponed until further notice the opening of the fourth quarter directed pollock fisheries in the Western and Central pollock subareas (WSA, CSA), which by regulation would have occurred on September 30, 1991, the first day of the fourth quarterly reporting period (56 FR 50281; October 4, 1991); 50 CFR 672.2; 50 CFR 672.20(a)(2)(v); (56 FR 28112, June 19, 1991).

This action terminates the ER. First, the section 7 consultation and environmental assessment under the ESA and National Environmental Policy Act (NEPA) have been completed. Second, on October 10, 1991, the Federal District Court for the Western District of Washington found the Secretary had complied with the ESA and NEPA in *Greenpeace USA* v. *Mosbacher*, Civ. No. C91-887(Z)C (W.D. Wash.) a lawsuit challenging the 1991 directed pollock fishery and its effects on Steller sea lions. The decision allows the Secretary to conduct fourth quarter Gulf of Alaska pollock fisheries. Therefore, the Secretary finds that an emergency no longer exists and by this action terminates the ER as of 12 noon, October 21, 1991. Fourth quarter directed fisheries for pollock will resume in the WSA and CSA at that time.

Secretarial Determinations

The Secretary has determined that this emergency interim rule is no longer necessary and appropriate for the conservation and management of the groundfish fishery.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to continue the ER. This notice relieves a restriction on U.S. fishermen participating in domestic annual processing groundfish operations. This action will also benefit U.S. fishermen participating in domestic annual processing groundfish operations, who have a need to plan and prepare for pollock directed fisheries.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: October 17, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 672 is amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 672.23 [Amended]

2. In § 672.23, paragraph (d) is removed effective 12 noon, A.l.t., October 21, 1991.

[FR Doc. 91-25476 Filed 10-18-91; 2:08 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 205
Wednesday, October 23, 1991

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

Food and Nutrition Service

7 CFR Parts 271, 272, 274, and 278

[Amendment No. 343]

Food Stamp Program: Miscellaneous Farm Bill Provisions Relating to the Authorization of Retail Firms and Wholesale Food Concerns

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement three provisions of the 1990 Farm Bill (Pub. L. 101–624, 104 Stat. #3359) which revise the Food Stamp Act of 1977, as amended (7 U.S.C. 2011 et seq.). The first provision would amend the definition of "food" to include meals sold to the homeless program participants by restaurants approved by State agencies for this purpose. Such restaurants must contract with the State and must be authorized by the Food and Nutrition Service to provide meals at concessional prices to homeless participants. The second provision would allow a periodic reauthorization of retail food stores and wholesale food concerns to participate in the Food Stamp Program. The third provision of the Farm Bill contained in this rule prohibits a firm which is primarily in the business of selling food at wholesale from being authorized as a retail food store unless failure to authorize such a firm as a retail food store would cause hardship to food stamp households.

The intended effect of the rulemaking is to (1) provide homeless food stamp households with additional sources of low-cost meals; (2) provide the Department with complete and current information on retailers and wholesalers participating in the Food Stamp Program; and (3) limit the authorization of the firms not needed to effectuate the purposes of the program.

DATES: Comments must b· received by November 22, 1991.

ADDRESSES: Comments should be addressed to Dwight Moritz, Food and Nutrition Service, Chief, Coupon and Retailer Branch, 3101 Park Center Drive, Alexandria, Virginia 22302. All written comment will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) in room 706, 3101 Park Center Drive, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Dwight Moritz at the above address or by telephone at (703) 756–3418.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The Department has reviewed this rule under Executive Order 12291 and Secretary's Memorandum No. 1512–1. This rule will affect the economy by less than $100 million a year. The rule will not raise costs or prices for consumers, industries, government agencies, or geographic regions. There will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified the rule as "not major."

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice to 7 CFR Part 3015 subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires inter-governmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354). The Administrator of the Food and Nutrition Service has certified that this action, while affecting some retail food firms and wholesale food concerns, will not have a significant impact on a substantial number of small entities. This rule may have a significant economic impact on some small entities affected by the rule. However, only a small number of firms will be affected.

Paperwork Reduction Act

The reporting or recordkeeping requirements of this rule have been approved by the Office of Management and Budget (OMB) under OMB number 0584–0008.

Background

Authorization of Restaurants to Serve Prepared Meals to Homeless Persons

Current rules provide that homeless persons participating in the program may use their food stamps to purchase meals from authorized public and private nonprofit meal providers including shelters and soup kitchens. To encourage the participation of eligible homeless persons and to provide them with additional sources of low-cost meals, section 1713 of the 1990 Farm Bill amended section 3(g)(9) of the Food Stamp Act of 1977, as amended (the Act) (7 U.S.C. 2012(g)(9)), to provide that restaurants may, under certain circumstances, be authorized to accept food stamps from homeless recipients.

To implement section 1713, this rulemaking would amend the definition of "Homeless Meal Provider" and "Retail Food Store" to include restaurants serving meals to homeless participants as well as the definition "Eligible Foods" to include meals sold to homeless participants by restaurants. Restaurants which desire to accept coupons for meals served to homeless participants will have to meet the requirements set forth in 7 CFR 278.1(a), (b) and (i), (i.e., an applicant's participation will further the purposes of the program; and finally, the applicant must contract with the appropriate State agency to serve meals to homeless persons at "concessional" prices.)

As required by the 1990 Farm Bill, and as described above, a restaurant will have to enter into a contract with the appropriate agency of the State to offer meals at concessional prices to homeless participants. In general, the appropriate agency of the State to contract with restaurants would be the agency responsible for administration of the Food Stamp Program in the State. However, the State may designate another agency, e.g., an agency responsible for feeding homeless persons.

The legislative history which accompanies section 1713 specifies that "concessional" prices means "reduced" prices. H.R. Rep. 101–916, 101st Cong., 1st Sess. 1087 (1990). This proposed rule requires that the contract between a restaurant and the State agency must specify the approximate prices which will be charged for meals.

Under this proposed rule, homeless participants' identification (ID) cards would be specially marked to show that they are eligible to use their food stamps at authorized restaurants. Further, the proposed rule would require the personnel of restaurants operating under State contracts to check the ID cards, except when they know the person is eligible to use food stamps to purchase meals (7 CFR 278.2(k)).

Current rules at 7 CFR 278.2(d) prohibit homeless meal providers from giving any cash to a homeless person purchasing a meal. That provision is based on the legislative history to the Homeless Eligibility Clarification Act, title XI of Public Law No. 99–570, (100 Stat. 3207) which provides that public and private nonprofit homeless meal providers shall not give cash change or credit slips. 132 Cong. Rec. 28986–87 (1986). The legislative history to Public Law 101–624 does not state whether restaurants may give cash change. The Department believes that it is not necessary or reasonable to prohibit restaurants which accept coupons for meals from homeless persons from giving cash change up to 99 cents. Thus, this proposed rule allows restaurants to give cash change up to 99 cents to homeless persons in food stamp transactions.

The legislative history of the Homeless Eligibility Clarification Act, Public Law No. 99–570, provided that public and private nonprofit homeless meal providers authorized to accept food stamps could accept only voluntary payment for meals. The 1990 Farm Bill places no such restrictions on restaurants. Therefore, this proposed rule would specify that the restriction on acceptance of only voluntary payment does not apply to restaurants.

Under current rules, public and private nonprofit homeless meal providers are prohibited from redeeming coupons through financial institutions; however, they may use loose coupons to purchase food from authorized retailers or wholesalers (§§ 278.1(c), 278.2(c), 278.2(g), 278.3(a) and 278.4(c)). This proposed rule revised those paragraphs to clarify that only public and private nonprofit homeless meal providers, not restaurants, may present loose coupons to retailers for redemption. In accordance with the statute, restaurants serving meals to homeless persons, however, are allowed to redeem coupons through insured financial institutions. This provision parallels the rules (at 7 CFR 278.4(c)) allowing restaurants providing meals to elderly and Supplemental Security Income (SSI) recipients (and their spouses) to redeem food stamps through insured financial institutions. Similarly, in the event that a restaurant serving elderly and/or SSI recipients or homeless recipients has no access to an insured financial institution, and FNS determines a wholesaler is required as a redemption outlet for that restaurant, that restaurant may redeem through a wholesaler.

Periodic Reauthorization of Retail Food Stores and Wholesale Food Concerns

It is very important to the integrity of the Food Stamp Program for the Department to have complete and current information on retailers and wholesalers participating in the Food Stamp Program. Having such information increases the Department's ability to monitor participation of stores in the program and to establish a firm's continued eligibility to accept and redeem coupons.

Current rules provide that FNS may require a firm to update information on its eligibility for authorization not more frequently than once each Federal fiscal year. Historically, it has not been standard practice to require firms to undergo a complete reauthorization process, and only selected information has been updated. To facilitate the process of updating store information, section 1733 of the Farm Bill of 1990 amended section 9(a) of the Act (7 U.S.C. 2018(a)), to give FNS authority to require a full and complete periodic reauthorization of all firms participating in the program. This proposed rule would implement this provision of the Farm Bill. In addition, this proposed rule would eliminate the annual limitation on updating information. FNS may occasionally need to send questionnaires to retailers in order to keep its files up-to-date. Such requests for information might fall in the same year as scheduled periodic reauthorization. The periodic reauthorization would, at a maximum, require completion of a new application and a full review by the appropriate FNS field office to determine the continued eligibility of a firm to participate in the program. Until the determination is made, a firm may continue to accept and redeem food stamps. If it is determined that the firm no longer qualifies, the firm will be advised in writing of FNS' intent to withdraw its authorization. The firm will also be given an opportunity to request an administrative review of the determination as set forth in §§ 278.8 and 279.5 of the regulations.

At this time the Department does not expect these periodic reauthorizations to be more frequent than once every 2 years. In addition, the reauthorization may vary in frequency, depending on the type of store, the volume of food stamp redemptions, or other firm characteristics. Thus, this may mean that some firms may be subject to reauthorization only once every 2 or 4 years.

Authorization of Wholesale Firms Co-located With Retail Food Stores

Currently some firms are authorized to participate in the Food Stamp Program as retail food stores although they are primarily wholesale firms doing limited retail business. Section 1734 of the 1990 Farm Bill amends section 9(b) of the Act (7 U.S.C. 2018(b)) to provide that no "co-located" wholesale/retail food concern may be authorized as a retail food store, unless (A) such wholesale/retail food concern does a substantial level of retail food business; or (B) the Secretary determines that failure to authorize such a wholesale/retail food concern as a retail food store would cause hardship to food stamp households. The Department interprets "co-located" to mean two units in close proximity so as to share common facilities. This proposed rule would implement this prohibition on the authorization as retailers of the "co-located" wholesale/retail food concerns.

Section 1734 restricts authorization of wholesalers as retailers to those firms doing a "substantial" retail food business. This proposed rule would require that a wholesale firm desiring to be authorized as a retailer must have at least 50 percent of its total sales in retail food sales. Other factors the Department considered in defining "substantial" were community image of the firm and the dollar amount of retail food business. However, the Department concluded that the most equitable and consistent approach to defining a "substantial" level of retail food business would be the ratio of retail food business to total business. Thus, retail food sales should constitute at least half of the total business activity. The Department is receptive to receiving public comment on this provision.

The Food and Nutrition Service's field offices, which have delegated responsibility for approving or denying applications from food concerns for authorization, may request sales records to substantiate a co-located wholesale/

retail firm's claim regarding the extent of its retail food sales. Such records might include State sales tax and other documents to establish how much retail and wholesale business a firm does.

This proposed rule provides for the authorization of a co-located wholesale/retail firm as a retailer regardless of the firm's ratio of retail food sales to total sales when it is established that hardship on food stamp recipients (not mere inconvenience) would result from not authorizing such firms. The Department would consider the following circumstances to constitute hardship: (1) Program recipients would have difficulty in finding authorized firms to accept their coupons for eligible food; (2) special ethnic foods would not otherwise be available to recipients; or (3) recipients would be deprived of an opportunity to take advantage of unusually low prices offered by the firm.

Current rules allow the authorization of wholesalers as redemption outlets for certain meal services which are prohibited by law from redeeming food stamps at banks. Wholesalers will continue to be authorized to accommodate meal services, including (1) community mental health centers or private nonprofit drug addiction or alcoholic treatment and rehabilitation programs, (2) public and private nonprofit shelters for battered women and children, (3) public or private nonprofit group living arrangements for blind and disabled residents, and (4) public and private nonprofit establishments that feed homeless individuals.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 274

Administrative practice and procedures, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, Groceries—retail, Groceries, General line—wholesaler, Penalties.

Accordingly, 7 CFR parts 271, 272, 274, and 278 are proposed to be amended as follows:

1. The authority for parts 271, 272, 274, and 278 continues to read as follows:

Authority: 7 U.S.C. 2011–2031.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2:

a. The definition of "Eligible foods" is amended by removing the word "and" at the end of paragraph (7), removing the period after paragraph (8) adding the word "; and" in its place, and by adding a new paragraph (9).

b. The definition of "Homeless meal provider" is revised.

c. The definition of "Retail food store" is amended by adding the words "or a restaurant that contracts with an appropriate State agency to provide meals at concessional (reduced) prices to homeless food stamp households;" at the end of paragraph (2).

The addition and revision read as follows:

§ 271.2 Definitions.

* * * * *

Eligible foods * * * (9) In the case of homeless food stamp households, meals prepared by a restaurant which contracts with an appropriate State agency to serve meals to homeless persons at concessional prices.

* * * * *

Homeless meal provider means (1) a public or private nonprofit establishment (e.g., soup kitchens, temporary shelters) that feeds homeless persons; or (2) a restaurant which contracts with an appropriate State agency to offer meals at concessional (reduced) prices to homeless persons.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. Section 272.9 is amended by adding two new sentences after the last sentence to read as follows:

§ 272.9 Approval of homeless meal providers.

* * * The State food stamp agency, or another appropriate State or local governmental agency identified by the State food stamp agency shall execute contracts with restaurants wishing to sell meals in exchange for food coupons to homeless food stamp households. Such contracts shall specify that such meals are to be sold at "concessional" (reduced) prices and shall also specify the approximate prices which will be charged.

PART 274—ISSUANCE AND USE OF COUPONS

4. In § 274.10:

a. Paragraph (a)(4)(iii) is redesignated as paragraph (a)(4)(iv) and a new paragraph (a)(4)(iii) is added.

b. Paragraph (j) is amended by adding three new sentences at the end of the paragraph.

The addition and revision read as follow:

§ 274.10 Use of identification cards and redemption of coupons by eligible households.

(a) * * *

(4) * * *

(iii) Eligible homeless households may use coupons to purchase meals from restaurants authorized by FNS such purpose. Any homeless household eligible for and interested in using restaurants in those areas where restaurants are authorized to accept food stamps shall have its ID card marked with the letters "CD".

* * * * *

(j) * * * However, in the cast of homeless food stamp households, neither cash change nor credit slips shall be returned for coupons used for the purchase of prepared meals for authorized public and private nonprofit homeless meal providers. Such meal providers may use uncancelled and unmarked $1 coupons for making change in food stamp transactions. Private establishments (restaurants) which are authorized by FNS under § 278.1 to provide meals to homeless food stamp recipients shall return cash change to such recipients in food stamp transactions when the amount of change due is less than 1 dollar.

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

5. In § 278.1:

a. Paragraph (b)(1)(iv) is revised.

b. Paragraph (c)(5) is revised.

c. Paragraph (d)(3) is amended by adding the words "homeless persons," before the word "elderly" the first time it appears.

d. Paragraph (r) is amended by adding the words "public and private nonprofit" before the words "homeless meal providers" or "Homeless meal providers" each time they appear. (six occurrences)

e. Paragraphs (i) through (s) are redesignated as paragraphs (j) through (t) respectively, and a new paragraph (i) is added.

f. A new paragraph (u) is added.

The revisions and additions read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

* * * * *

(b) *Determination of authorization.*

* * *

(1) * * * (iv) A firm whose primary business is the sale of food at the wholesale level may not be authorized as a retail food store unless:

(A) Its total retail food sales are at least 50 percent of its total sales; or

(B) failure to authorize such a food concern would result in hardship to food stamp households. Hardship would occur in any one of the following circumstances:

(*1*) program recipients would have difficulty in finding authorized firms to accept their coupons for eligible food;

(*2*) special ethnic foods would not otherwise be available to recipients; or

(*3*) recipients would be deprived of an opportunity to take advantage of unusually low prices offered by the firm.

* * * * *

(c) *Wholesalers* * * * (5) for one or more specified authorized public or private-nonprofit homeless meal providers.

* * * * *

(i) *Private Homeless Meal Providers.* FNS shall authorize as retail food stores those private establishments (restaurants) which contract with the appropriate State agency to serve meals to homeless persons at "concessional" (reduced) prices. Private homeless meal providers shall be responsible for obtaining contracts with the appropriate State agency as defined in § 272.9 and for providing a copy of the contract to the FNS Officer in Charge. Contracts must specify the approximate prices which will be charged.

* * * * *

(u) *Reauthorization.* The approval to accept and redeem food stamps issues to a retail food store or a wholesale food concern is subject to periodic reauthorization.

§ 278.2 [Amended]

6. In § 278.2:

a. Paragraph (a) is amended by adding the words "public or private nonprofit" before the word "homeless" in the last sentence of the paragraph.

b. Paragraph (b) is amended by adding the words "public or private nonprofit" before the words "homeless meal providers." and by adding the words "public or private nonprofit" before the words "homeless meal provider."

c. Paragraph (c) is amended by adding the words "public or private nonprofit" before the words "homeless meal provider" the first time they appear in the third sentence of the paragraph.

d. Paragraph (d) is amended by adding the words "public or private nonprofit" before the words "homeless meals providers" in the third sentence.

e. Paragraph (g) is amended by adding the words "public and private non-profit" before the words "homeless meal providers" wherever they occur. (two occurrences).

f. Paragraph (h) is amended by adding the words "public or private non-profit" before the words "homeless meal providers" in the last sentence of the paragraph.

g. Paragraph (l) is amended by adding the words "public and nonprofit" before the words "Homeless meal providers"

§ 278.3 [Amended]

7. In § 278.3, paragraph (a) is amended by adding the words "public or private nonprofit" before the words "homeless meal providers" wherever it occurs. (three occurrences).

§ 278.4 [Amended]

8. In § 278.4, the second sentence of paragraph (c) is amended by adding the words "public and private nonprofit" before the words "homeless meal providers."

Dated: October 16, 1991.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service.

[FR Doc. 91–25370 Filed 10–22–91; 8:45 am]

BILLING CODE 3410–30–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Policy; Accrued Interest

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: When the Small Business Administration (SBA) purchases the guaranteed portion (GP) of a loan from a participating lender which had not sold the GP in the secondary market, SBA pays accrued interest to such lender. This proposed rule would limit the accrued interest payable by SBA to 120 days from the borrower's earliest uncured default, plus approved deferment periods. In addition, if the lender, within such 120 days, requests SBA to purchase SBA would pay accrued interest for the SBA time spent in processing the request. Such action is being proposed in order to encourage lenders to promptly make demand on SBA to purchase so that SBA's interest costs would be reduced.

DATES: Comments must be submitted on or before December 23, 1991.

ADDRESSES: Comments may be mailed to Charles R. Hertzberg, Assistant Administrator for Financial Assistance, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, 202/205–6490.

SUPPLEMENTARY INFORMATION: The SBA is constantly seeking to minimize program costs consistent with the accomplishment of program objectives. The Agency is proposing to institute a policy to limit the interest when SBA purchases the GP of a loan that has not been sold in the secondary market. The proposal is to limit the run of interest to 120 days from the date of the borrower's earliest uncured default plus approved deferments in all cases except where circumstances clearly justify an exception. In addition, if the lender, within such 120 days, requests SBA to purchase the GP, SBA will pay accrued interest for the SBA time spent in processing the request.

Because SBA is aware that circumstances vary, the proposed rule would allow the SBA branch or district office Chief, Portfolio Management Division (line supervisor) or his/her designee to approve additional time for which accrued interest would be paid, but only when the lender and SBA can agree that the borrower can cure the default within a reasonable and definite period of time or in other situations where the benefits exceed the cost of SBA paying interest in excess of the 120 days. The SBA line supervisor or his/her designee would be authorized to act prior to the expiration of the 120 day accrual period. If the extension is considered subsequent to the expiration of the 120 day period, approval could be made only by the SBA Director, Office of Portfolio Management. In any case in which the Agency agrees to pay interest in excess of 120 days plus the allowable deferment period and SBA processing time, there would have to be, pursuant to this proposed rule, a reasonable expectation that there would be an increased net recovery to the Agency.

The Agency also defines "earliest uncured default" for use in this area. This is important in order to enable all affected parties to have a clear understanding of the term so that proper calculations can be made. The term means the date the borrower failed to

make a regularly scheduled installment payment of principal and interest when due, if the borrower has not made subsequent payments for 60 days since such initial nonpayment. Thus, if a borrower does not make an installment payment when due on May 1, and fails to make additional payments on June 1 and July 1, the "earliest uncured default" is May 1. SBA is also proposing to amend § 120.202–1 to make clear that when a borrower cures the default by making an installment payment, the lender's right, based on such default, to demand that SBA purchase shall lapse. Thus, a default that is cured would not trigger the right to demand purchase.

If the GP has been sold in the secondary market, there are procedures in effect which require the fiscal and transfer agent, on behalf of the investor, to make a prompt demand on the SBA after a default by the borrower. The investor receives accrued interest to the date of SBA's purchase. SBA is not proposing any change to the calculation of interest on such GPs.

Section 120.202–5(e) of SBA regulations (13 CFR § 120.202–5(e)) presently provides that SBA shall be released from its obligation to purchase the GP if the lender fails to demand purchase within one year of the maturity of the note. The Agency is also proposing to amend § 120.202–5(e) so that a lender would be permitted to make demand on SBA to purchase the GP up to 120 days after the maturity of all loans except for lines of credit. Lenders would still have the right to demand purchase from SBA for up to one year after maturity of such lines of credit loans. This exception would be allowed because of the nature of lines of credit loans wherein the borrower draws funds from the lender as needed from time to time. The proposed change comports with the SBA intent to reduce the number of days of accrued interest it plans to pay. It would be incongruous and inconsistent for SBA to place a 120 day cap on SBA's payment of interest while retaining the present rule which allows a lender up to one year after any loan's maturity to demand purchase of the GP. More importantly, the Agency would be protecting its rights with respect to the collateral by reducing the period in which the lender must make demand on the Agency to purchase. Quicker action on making demand means that the borrower's collateral would be more readily available so that SBA could be in a better position to reduce any loss by obtaining funds from the sale of collateral at foreclosure.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this proposed rule, if promulgated in final form, will not have a significant impact on a substantial number of small entities.

SBA certifies that this proposed rule, if promulgated as final, will not constitute a major rule for the purposes of Executive Order 12291, since the proposed changes are not likely to result in an annual effect on the economy of $100 million or more.

The proposed rule, if promulgated as final, would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

This proposed rule, if promulgated as final, would not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 120

Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA hereby proposes to amend part 120, chapter I, title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for part 120 would continue to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a) and (h).

2. Section 120.202–1 would be amended by adding a sentence at the end to read as follows:

§ 120.202–1 SBA purchase determination.

* * * When a default is cured by the making of a payment, the right to demand purchase based on such default shall lapse.

3. Section 120.202–4 would be revised to read as follows:

§ 120.202–4 Accrued interest to lender or investor.

(a) *Accrued interest to lender which has not sold guaranteed share.* With respect to a fixed rate note, when SBA purchases the guaranteed share from a Lender which the Lender had not sold in the secondary market, SBA's payment of accrued interest to the Lender shall be at the rate of interest provided in the note. When SBA purchases the guaranteed share of a fluctuating interest rate loan which Lender has not sold in the secondary market, SBA's payment of accrued interest to the Lender shall be at the rate in effect at the time of the earliest uncured default when a default has occurred, or at the rate in effect at the time of purchase where no default has occurred.

(1) Generally, whether the note carries a fixed or a fluctuating interest rate, the accrued interest payable to the Lender shall not exceed 120 days from the date of the borrower's earliest uncured default, plus approved deferment periods. In addition, if the Lender's request to SBA to purchase is made within such 120 days, SBA will pay accrued interest for the SBA time spent in processing such request.

(i) The appropriate SBA branch or district Chief, Portfolio Management Division (line supervisor) or his/her designee may approve an extension of time in addition to the 120 days allowed by this regulation, when the Lender and SBA agree that a cure of the default can be expected within a reasonable and definite period of time or in other situations where the benefits exceed the costs of additional days of interest. The SBA line supervisor or his/her designee may approve such an extension only prior to the expiration of the 120 day accrual period. If the extension of time is considered subsequent to the expiration of the 120 day period, approval shall only be made by the SBA Director, Office of Portfolio Management or his/her designee.

(ii) In making the decision to extend the 120 day period, the SBA line supervisor and his/her designee and, when applicable, the SBA Director, Office of Portfolio Management and his/her designee, must be satisfied that there is a reasonable expectation that the resulting increased interest costs will be covered in borrower payments or otherwise.

(2) The "earliest uncured default" occurs on the date on which the borrower failed to make a regularly scheduled installment payment of principal and interest when due if the borrower has not made subsequent payments for 60 days since the initial such nonpayment. The payment of an installment of principal and interest will move forward in time the earliest uncured default date.

(b) *Accrued interest to investor in secondary market.* When SBA purchases its guaranteed share from an investor, its payment of accrued interest to the date of purchase from the investor

shall be at the rate of interest provided in the note. On those loans with a fluctuating interest rate, SBA's payment of accrued interest to the investor shall be at the rate in effect at the time of the earliest uncured default when a default has occurred, or at the rate in effect at the time of purchase where no default has occurred.

4. Section 120.202–5 would be amended by revising paragraph (e) to read as follows:

§ 120.202–5 When SBA does not purchase.

* * * * *

(e) *Late Demand.* Failure of the Lender to demand purchase of an unpaid guaranteed portion within 120 days after maturity of the loan, *provided, however,* that for line of credit loans, the Lender shall have one year after maturity of such loans to demand purchase from SBA.

* * * * *

(Catalog of Federal Domestic Assistance Programs, No. 59.012, Small Business Loans)

Dated: October 1, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–25361 Filed 10–22–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–163–AD]

Airworthiness Directives; Aerospatiale Model ATR42–200, –300, and –320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–200, –300, and –320 series airplanes, which would require repetitive inspections to detect corrosion and cracks in the main landing gear (MLG) wheel axle, and replacement of the landing gear swinging lever assembly, if necessary. This proposal is prompted by a recent report of failure of the MLG wheel axle due to stress corrosion. This condition, if not corrected, could result in loss of the wheel assembly.

DATES: Comments must be received no later than December 16, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–163–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Standardization Branch, ANM–113; telephone (206) 227–1112. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–163–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de l'Aviation Civile (DGAC) which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Aerospatiale Model ATR42–200, –300, and –320 series airplanes. There has been a recent report of failure of a MLG wheel axle which occurred at the jacking dome hole level of the axle due to stress corrosion. This condition, if not corrected, could result in loss of the wheel assembly.

Aerospatiale has issued Service Bulletin ATR42–32–0038, Revision 1, dated June 24, 1991, which describes procedures to perform repetitive inspections to detect corrosion and cracks in the MLG wheel axle, and replacement of the landing gear swinging lever assembly, if necessary. The Aerospatiale service bulletin references Messier-Bugatti Service Bulletin 631–32–071, Revision 1, dated July 5, 1991, as an additional information source. The French DGAC has classified these service bulletins as mandatory, and has issued Airworthiness Directive 91–081–040(B)R1 addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive inspections to detect corrosion and cracks in the MLG wheel axle, and replacement of the landing gear swinging level assembly, if necessary, in accordance with the service bulletins previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

It is estimated that 77 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,470.

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies

and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket No. 91–NM–163–AD.

Applicability: Model ATR42–200, –300, and –320 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent loss of the wheel assembly, accomplish the following:

(a) Perform a boroscope inspection to detect corrosion of the main landing gear (MLG) wheel axles at the jacking dome hole level, in accordance with Aerospatiale Service Bulletin ATR42–32–0038, Revision 1, dated June 24, 1991, at the applicable time specified below:

Note: The Aerospatiale Service Bulletin references Messier-Bugatti Service Bulletin 631–32–071, Revision 1, dated July 5, 1991, as an additional information source.

(1) For airplanes on which an axle has accumulated 10,000 or more landings as of the effective date of this AD, within 30 days after the effective date of this AD.

(2) For airplanes on which an axle has accumulated 8,000 or more landings but less than 10,000 landings as of the effective date of this AD, within 90 days after the effective date of this AD.

(3) For airplanes on which an axle has accumulated 6,000 or more landings but less than 8,000 landings as of the effective date of this AD, within 120 days after the effective date of this AD.

(4) For airplanes on which an axle has accumulated less than 6,000 landings as of the effective date of this AD, prior to the accumulation of 6,000 landings or within 120 days after the effective date of this AD, whichever occurs later.

(b) If no corrosion is found, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 3,200 landings.

(c) If corrosion is found, prior to further flight, perform an eddy current inspection to detect cracks in the wheel axle, in accordance with Aerospatiale Service Bulletin ATR42–32–0038, Revision 1, dated June 24, 1991.

(1) If no cracks are found, replace the swinger lever assembly prior to the accumulation of 50 additional landings, in accordance with the service bulletin.

(2) If cracks are found, prior to further flight, replace the swinger lever assembly, in accordance with the service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 15, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–25485 Filed 10–22–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–167–AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which would require the inspection and modification, if necessary, of the wing fixed inboard trailing edge upper panel, and replacement of aluminum fasteners with oversized titanium fasteners. This proposal is prompted by reports from the manufacturer which indicate that aluminum fasteners were used to attach the graphite panel assembly to the wing structure. This condition, if not corrected, could lead to fastener corrosion which could result in the separation of the panel assembly from the airplane causing the hydraulic supply lines and electric wire bundles attached to the panel to break, and could also result in structural damage to the airplane.

DATES: Comments must be received no later than December 16, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–167–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Rodriguez, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2779. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-167-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The manufacturer has reported that, on certain Model 757 series airplanes, aluminum fasteners were used to attach the wings' fixed inboard trailing edge upper panels, which are made of graphite, to the aluminum wing structure. Corrosion could result in this situation because of the combination of the dissimilar materials used. Such corrosion, if not detected and removed, could lead to the separation of the panel assembly from the airplane.

If a panel were to depart the airplane, hydraulic supply lines and electrical wire bundles attached to the underside of the panel could be torn away. These lines are part of the main landing gear wheel brake anti-skid shuttle valve module hydraulic circuit. Damage to the hydraulic lines can result in the loss of operation of the main wheel brake anti-skid system and loss of braking to half of the wheels on that side of the airplane. This condition, if not corrected could lead to partial loss of braking capability, damage to the attached wire bundles, and damage to the airplane structure from the departing panel.

The FAA has reviewed and approved Boeing Service Bulletin 757-57-0036, dated June 13, 1991, which describes procedures for inspection of the wing fixed inboard trailing edge upper panel to determine if it is made of graphite material and, if so, modification of the graphite panel by installing glass fabric around the edge. The modification procedures include the replacement of aluminum fasteners with oversized titanium fasteners.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require the inspections and modification, if necessary, of the fixed inboard trailing edge upper panel in accordance with the service bulletin previously described. The modification would include the replacement of the aluminum fasteners with oversized titanium fasteners. The proposed AD would not require further action for airplanes equipped with panels made of glass fabric.

There are approximately 371 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 227 airplanes of U.S. registry would be affected by this AD, that it would take approximately 78 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $973,830.

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket No. 91-NM-167-AD.

Applicability: Model 757 series airplanes, listed in Boeing Service Bulletin 757-57-0036, dated June 13, 1991, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent the separation of the fixed inboard trailing edge upper panel and consequent damage to airplane structure, hydraulic lines, and wire bundles, accomplish the following:

(a) For airplanes line numbers 1 through 141: Within the next 15 months after the effective date of this AD, determine the panel assembly part number of the lift and right wing in accordance with Boeing Service Bulletin 757-57-0036, dated June 13, 1991.

(1) If a panel assembly part number 113N1611-9 (left), -10 (right), -11 (left), or -12 (right), no further action necessary.

(2) If a panel assembly part number if 113N1611-13 (left), -14 (right), -15 (left), or -16 (right), modify the fixed inboard trailing edge upper panel prior to further flight, in accordance with Boeing Service Bulletin 757-57-0036, dated June 13, 1991.

(b) For airplanes line numbers 142 through 371: Within the next 15 months after the effective date of this AD, modify the fixed inboard trailing edge upper panel in accordance with Boeing Service Bulletin 757-57-0036, dated June 13, 1991.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the manager, Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 15, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-25486 Filed 10-22-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-CE-70-AD]

Airworthiness Directives; Fairchild Aircraft (formerly Swearingen) SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that

would be applicable to Fairchild Aircraft SA226 and SA227 series airplanes. The proposed action would require a modification to the horizontal stabilizer aft spar attach fitting installation and stabilizer skin, and repetitive inspections of the radius area of the rib splice straps for cracks with subsequent modification if found cracked. Fasteners that attach the pivot fitting of the horizontal tail to the rear spar have been found broken on several of the affected airplanes. The actions specified by this AD are intended to prevent failure of the horizontal stabilizer caused by broken pivot fitting fasteners, which could result in complete loss of control of the airplane.

DATES: Comments must be received on or before January 3, 1992.

ADDRESSES: SA226 Series Service Bulletin 55–010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991, and SA227 Series Service Bulletin 55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: May 22, 1991, that are discussed in this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; Telephone (512) 824–9421. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–70–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Fort Worth Aircraft Certification Office, 4400 Blue Mound Road, Fort Worth, Texas 76193; Telephone (817) 624–5155; Facsimile (817) 624–5029.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–70–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Fasteners that attach the pivot fitting of the horizontal tail to the rear spar have been found broken on several SA226 and SA227 series airplanes that have over 10,000 hours time-in-service (TIS). If not detected and corrected, this condition could cause failure of the horizontal stabilizer and complete loss of control of the airplane. The manufacturer (Fairchild Aircraft) has issued SA226 Series Service Bulletin 55–010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991, and SA227 Series Service Bulletin 55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: May 22, 1991, which specify modification procedures for the horizontal stabilizer rear spar attach fitting installation and the stabilizer skin.

The FAA has reviewed all available information related to the incidents described above, examined this situation, and determined that AD action should be taken for products of the same type design.

Since the condition described is likely to exist or develop in other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design, the proposed AD would require a modification to the horizontal stabilizer aft spar attach fitting installation and the stabilizer skin in accordance with Fairchild SA226 Series Service Bulletin 55–010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991, or Fairchild SA227 Series Service Bulletin 55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: May 22, 1991, whichever is applicable. It also would require repetitive inspections of the radius area of the rib splice straps for cracks with subsequent modification if found cracked.

It is estimated that 715 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 32 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $1,400 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,259,400.

The regulations proposed herein would 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 proposal would 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 "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed 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, Safety

The Proposed Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Fairchild Aircraft (formerly Swearingen): Docket No. 91–CE–70–AD.

Applicability: Model SA226–T airplanes (serial numbers (S/N) T201 through T275 and T277 through T291), Model SA226–T(B) airplanes (S/N T(B)276 and T(B)292 through T(B)417), Model SA226–AT airplanes (S/N AT001 through AT074), Model SA226TC airplanes (S/N TC201 through TC419), Model SA227–TT airplanes (S/N TT421 through TT541), Model SA227–AT airplanes (S/N AT423 through AT 695), and Model SA227–AC airplanes (S/N AC406, AC415, AC416, AC420 through AC783, and AC785), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent failure of the horizontal stabilizer caused by broken pivot fitting fasteners, which could result in complete loss of control of the airplane, accomplish the following:

(a) Upon the accumulation of 10,000 hours time-in-service (TIS) or within the next 1,000 hours TIS after the effective date of this AD, whichever occurs later, accomplish the following:

(1) Modify the horizontal stabilizer aft spar attach fitting installation in accordance with paragraphs A. (1) through A. (7) of 2. Accomplishment Instructions in Fairchild SA226 Series Service Bulletin 55–010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991, or Fairchild SA227 Series Service Bulletin 55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: May 22, 1991, whichever is applicable.

(2) Modify the stabilizer skin in accordance with paragraphs B. (1) through B. (4) of 2. Accomplishment Instructions in Fairchild SA226 Series Service Bulletin 5–010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991, or Fairchild SA227 Series Service Bulletin 55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: May 22, 1991, whichever is applicable.

(3) Visually inspect the radius area of the rib splice strap for cracks in accordance with Figure 2 in Fairchild SA226 Series Service Bulletin 55–010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991, or Fairchild SA227 Series Service Bulletin 55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: May 22, 1991, whichever is applicable.

(i) If cracks are found, prior to further flight, obtain a repair scheme from the manufacturer through the Fort Worth Aircraft Certification Office at the address specified in paragraph (c) of this AD, incorporate the repair scheme, return the airplane to service, and reinspect thereafter at intervals not to exceed 5,000 hours TIS.

(ii) If not cracks are found, return the airplane to service and reinspect thereafter at intervals not to exceed 5,000 hours TIS.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Fort Worth Aircraft Certification Office, FAA, 4400 Blue Mound Road, Fort Worth, Texas 76193. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 9, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 91–25487 Filed 10–22–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–69–AD]

Airworthiness Directives; Lockheed Aeronautical Systems Company-Georgia Model 382 Series Airplanes

AGENCY: Fedeal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Lockheed Model 382 series airplanes, which currently requires repetitive visual and eddy current inspections to detect fatigue cracking in the pressurized fuselage fairing support structure, and repair, if necessary. Fatigue cracking, if not detected and corrected, could degrade the structural integrity of the airframe and lead to decompression of the airplane. This action would revise the currently required inspections, the repetitive inspection intervals, and the repair procedures. This proposal is prompted by structural improvement modifications which, if accomplished would permit longer repetitive inspection intervals.

DATES: Comments must be received no later than December 16, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–69–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Lockheed Aeronautical Systems Company, Attn: Commercial and Customer Support, Department 73–05, Zone 0199, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avneue SW., Renton, Washington, or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas B. Peters, Aerospace Engineer, Flight Test Branch, ACE–160A; telephone (404) 991–3915. Mailing address: FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing data for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–69–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On July 3, 1989, the FAA issued AD 89–15–03, Amendment 39–6265 (54 FR 29535, July 13, 1989), to require a revision to the Limitations Section of the Airplane Flight Manual (AFM) that temporarily reduces the cabin pressurization limit; and initial and

repetitive inspections for cracks of the pressurized fairing support structure, and repair, if necessary. That action was prompted by a report of an explosive decompression on an airplane of similar design due to the failure of the fuselage pressurized fairing support structure. The failure was the result of fatigue cracks in the frame at fuselage station (FS) 477 between buttock lines (BL) 20 to 61. Undetected fatigue cracks could degrade the structural integrity of the airframe and lead to decompression of the airplane.

Since issuance of that AD, the manufacturer has developed structural improvement modifications and procedures which, if accomplished, would allow the repetitive inspection intervals for certain currently-required inspections to be extended.

The FAA has reviewed and approved Lockheed Aeronautical Systems Company-Georgia Service Bulletin 382–53–50, dated February 14, 1990, and ERRATA Notice, dated February 22, 1990, which describe procedures for visual and eddy current inspections and repair instructions for the pressurized fuselage fairing support structure between fuselage stations 477 and 517, buttock lines 61L and 61R; and procedures for installation of structural modifications in the bulkhead webs. The service bulletin references Standard Maintenance Publication (SMP) 515–A/C Work Cards SP–126 and SP–224, which describe procedures to perform visual and non-destructive testing inspections of the aft bulkhead area.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 89–15–03 with a new AD that would require an improved inspection procedure, a modified inspection interval, and repair/modification procedures in accordance with the service bulletin previously described.

It is estimated that 25 airplanes of U.S. registry would be affected by this AD, that it would take approximately 66 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $90,750 for the initial inspections performed according to the improved procedure. Depending upon the inspection procedure used and the structural modifications installed, subsequent inspections could be performed less often than currently required; therefore, this action could reduce the economic burden on affected operators.

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6265 and by adding the following new airworthiness directive (AD):

Lockheed Aeronautical Systems Company-Georgia: Docket No. 91–NM–69–AD. Supersedes AD 89–15–03.

Applicability: Model 382 series airplanes, Serial Numbers 3946 and subsequent, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent fatigue cracking and subsequent decompression of the airplane, accomplish the following:

(a) For airplanes that had accumulated 6,300 hours time-in-service prior to July 31, 1989 (the effective date of AD 89–15–03, Amendment 39–6265), within the next 10 hours time-in-service after July 31, 1989, accomplish the following:

(1) Incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by including a copy of this AD in the AFM.

"Aircraft cabin operating pressure is limited to 10 inches of mercury."

(2) Temporarily reduce cabin operating pressure in accordance with paragraph (a)(1) of this AD.

(b) For all other airplanes, within 10 hours time-in-service after the effective date of this AD, or prior to the accumulation of 6,300 hours time-in-service, whichever occurs later, accomplish the following:

(1) Incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by including a copy of this AD in the AFM.

"Aircraft cabin operating pressure is limited to 10 inches of mercury."

(2) Temporarily reduce cabin operating pressure in accordance with paragraph (b)(1) of this AD.

(c) For airplanes that had accumulated 6,300 hours time-in-service prior to July 31, 1989 (the effective date of AD 89–15–03, Amendment 39–6265), and have not been inspected in accordance with AD 89–15–03: Within 45 days after the effective date of this AD, perform an inspection of the following areas of the pressurized fuselage fairing support (FS) structure according to the specified Work Card procedures of Standard Maintenance Publication (SMP) 515–A/C, as specified in Lockheed Aeronautical Systems Company (LASC)–Georgia Service Bulletin 382–53–50, dated February 14, 1990, and ERRATA NOTICE, dated February 22, 1990:

FS477 to FS517 General Area.	Work Card SP–126.
FS477 Upper Web Flange.	Work Card SP–224.
FS497 Overhead Bulkhead Web and Tee-Outboard:	
S/N 3946 through S/N 4932.	Work Card SP–224.
S/N 4933 and subsequent.	Work Card SP–126.
FS497 Overhead Bulkhead Upper Attach Angle.	Work Card SP–224.

(d) For airplanes that have been inspected in accordance with AD 89–15–03, within 3,000 hours time-in-service since the last inspection, perform an inspection of the following areas of the pressurized fuselage fairing support (FS) structure according to the specified Work Card procedures of Hercules Maintenance Program Plan SMP 515–A/C, as shown in LASC-Georgia Service Bulletin 382–53–50, dated February 14, 1990, and ERRATA NOTICE, dated February 22, 1990:

FS477 to FS517 General Area.	Work Card SP–126.
FS477 Upper Web Flange.	Work Card SP–224.

FS497 Overhead Bulkhead Web and Tee-Outboard:	
S/N 3946 through S/N 4932.	Work Card SP-224.
S/N 4933 and subsequent.	Work Card SP-126.
FS497 Overhead Bulkhead Upper Attach Angle.	Work Card SP-224.

(e) For all other airplanes, prior to the accumulation of 6,300 hours time-in-service, or within 45 days after the effective date of this AD, whichever occurs later, perform an inspection of the following areas of the pressurized fuselage fairing support (FS) structure according to the specified Work Card procedures of Hercules Maintenance Program Plan SMP 515-A/C, as shown in LASC-Georgia Service Bulletin 382-53-50, dated February 14, 1990, and ERRATA NOTICE, dated February 22, 1990:

FS477 to FS 517 General Area.	Work Card SP-126.
FS477 Upper Web Flange.	Work Card SP-224.
FS497 Overhead Bulkhead Web and Tee-Outboard:	
S/N 3946 through S/N 4932.	Work Card SP-224.
S/N 4933 and subsequent.	Work Card SP-126.
FS497 Overhead Bulkhead Upper Attach Angle.	Work Card SP-224.

(f) For all airplanes, repeat the inspections specified in, and in accordance with, the following documents at intervals not to exceed 3,600 hours time-in-service:

FS477 to FS517 General Area.	Work Card SP-126.
FS477 Upper Web Flange.	Work Card SP-224.
FS497 Overhead Bulkhead Web and Tee-Outboard:	
S/N 3946 through S/N 4932.	Work Card SP-224.
S/N 4933 and subsequent.	Work Card SP-126.
FS497 Overhead Bulkhead Upper Attach Angle.	Work Card SP-224.

(g) If cracks are found, prior to further flight, repair in accordance with the procedures contained in Appendix A of LASC-Georgia Service Bulletin 382-53-50, dated February 14, 1990, and ERRATA NOTICE, dated February 22, 1990; or in a manner approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, FAA, Small Airplane Directorate. After repair, continue to perform the repetitive inspections required by paragraph (f) of this AD.

(h) The limitations required by paragraphs (a) and (b) of this AD may be removed if one of the conditions specified in either paragraph (h)(1), (h)(2), (h)(3), or (h)(4) of this AD, is applicable:

(1) If no cracks were found as a result of the inspections performed in accordance with AD 89-15-03, Amendment 39-6265; or

(2) If any cracks were found as a result of the inspections performed in accordance with AD 89-15-03, Amendment 39-6265 were repaired in accordance with paragraph C. of that AD; or

(3) If no cracks are found as a result of the inspections required by paragraphs (c), (d), (e), or (f) of this AD; or

(4) If cracks are found as a result of the inspections required by paragraphs (c), (d), (e), or (f) of this AD, and they are repaired in accordance with paragraph (g) of this AD.

(i) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, FAA, Small Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Atlanta Aircraft Certification Office, ACE-115A.

(j) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed Aeronautical Systems Company, Attn: Commercial and Customer Support, Department 73-05, Zone 0199, 86 South Cobb Drive, Marietta, Georgia 30063. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia.

Issued in Renton, Washington, on October 15, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 91-25488 Filed 10-22-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-200-AD]

Airworthiness Directives; Short Brothers, PLC, Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Short Brothers Model SD3-60 series airplanes, which would require a one-time visual inspection of the rudder torque tube fitting to detect signs of exfoliation corrosion, and repair, if necessary; and an application of pre-treatment penetrant and corrosion preventative. This proposal is prompted by reports indicating that the rudder torque tube fitting has been subject to exfoliation corrosion. This condition, if not corrected could result in failure of the torque tube fitting and reduced controllability of the airplane.

DATES: Comments must be received no later than December 16, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-200-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202-3719. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Hank Jenkins, Standardization Branch, ANM-113; telephone (206) 227-2141. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–200–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Short Brothers Model SD3–60 series airplanes. There have been recent reports indicating that the rudder torque tube fitting at Rib 1 has been subject to exfoliation corrosion. This condition, if not corrected could result in failure of the torque tube fitting and reduced controllability of the airplane.

Short Brothers has issued Service Bulletin SD360–55–17, dated May 7, 1991, which describes procedures to perform a one-time visual inspection of the rudder torque tube fitting to detect signs of exfoliation corrosion, and repair, if necessary; and an application of pre-treatment penetrant and corrosion preventative. The United Kingdom CAA has classified this service bulletin as mandatory, and has issued Airworthiness Directive 003–05–91 addressing this subject.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time visual inspection of the rudder torque tube fitting to detect signs of exfoliation corrosion, and repair, if necessary; and an application of pre-treatment penetrant and corrosion preventative in accordance with the service bulletin previously described.

This is considered to be a interim action until final action is identified, at which time the FAA may consider further rulemaking.

It is estimated that 60 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $16,500.

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers: Docket No. 91–NM–200–AD.

Applicability: Model SD3–60 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent failure of the rudder torque tube fitting and reduced controllability of the airplane, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a visual inspection of the rudder torque tube fitting to detect signs of exfoliation corrosion, in accordance wth Short Brothers Service Bulletin SD360–55–17, dated May 7, 1991.

(b) If exfoliation corrosion is found as a result of the inspection required by paragraph (a) of this AD, accomplish the following:

(1) Report findings of exfoliation corrosion to Short Brothers, PLC, in accordance with the service bulletin. The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

(2) If the corrosion is within the limits specified in Part B of the service bulletin, prior to further flight, remove the corrosion and apply pre-treatment penetrant and corrosion preventative in accordance with the service bulletin.

(3) If the corrosion exceeds the limits specified in Part B of the service bulletin, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) If no signs of exfoliation corrosion are found as a result of the inspection required by paragraph (a) of this AD, prior to further flight, apply pre-treatment penetrant and corrosion preventative in accordance with the service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(e) Special flight permits may be used in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 15, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–25547 Filed 10–22–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ASW–24]

Proposed Revision of Transition Area: Las Cruces, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Las Cruces, NM. The development of a new standard instrument approach procedure (SIAP) based on a new instrument landing system (ILS) has made this proposal necessary. The new

SIAP is an ILS Runway 30. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new ILS Runway 30 SIAP.

DATES: Comments must be received on or before December 13, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 91–ASW–24, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Mark F. Kennedy, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments a they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91–ASW–24." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.181 of Federal Aviation Regulations (14 CFR part 71) to revise the 700-foot transition area located at Las Cruces, NM. The development of a new ILS Runway 30 SIAP has made this proposal necessary. The radius of the current transition area would remain unchanged and an arrival extension would be added to the southeast to provide adequate controlled airspace for aircraft executing this SIAP. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (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, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Las Cruces, NM [Revised]

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of the Las Cruces International Airport (latitutde 32°17'22"N., longitude 106°55'17"W.) and within 2 miles each side of the 135° bearing from the airport extending from the 10.5-mile radius to 14.5 miles southeast of the airport.

Issued in Fort Worth, TX on September 30, 1991.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 91–25489 Filed 10–22–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 91–AEA–15]

Proposed Revocation of Transition Area; Hershey, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration (FAA) is proposing to revoke the 700 foot Transition Area established at Hershey, PA. This action is proposed due to the deactivation of Hershey Airpark, Hershey, PA, and the cancellation of all Standard Instrument Approach Procedures (SIAP) to the airpark.

DATES: Comments must be received on or before November 15, 1991.

ADDRESSES: Send comments on the rule in triplicate to: Edward R. Trudeau, Manager, System Management Branch, AEA–530, Docket No. 91–AEA–15, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA-530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AEA-15". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the 700 foot Transition Area established at Hershey, PA, due to the deactiviation of the Hershey Airpark, Hershey, PA, and the cancellation of all SIAPs to this airpark. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (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, when promulgated, this proposed 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

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Hershey, PA [Removed]

Issued in Jamaica, New York, on September 23, 1991.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 91-25490 Filed 10-22-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-AEA-16]

Proposed Revocation of Transition Area; Gloucester, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration (FAA) is proposing to revoke the 700 foot Transition Area established at Gloucester, VA. This action is proposed due to the cancellation of all Standard Instrument Approach Procedures (SIAP) to the Francis J. Mellar Field (formerly Gloucester Airport), Gloucester, VA. The status of the airport would be changed to allow operations under visual flight rules (VFR) only.

DATES: Comments must be received on or before November 15, 1991.

ADDRESSES: Send comments on the rule in triplicate to: Edward R. Trudeau, Manager, System Management Branch, AEA-530, Docket No. 91-AEA-16, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA-530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91–AEA–16". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the 700 foot Transition Area established at Gloucester, VA, due to the cancellation of all SIAPs to the Francis J. Mellar Field (formerly Gloucester Airport), Gloucester, VA. § 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (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, when promulgated, this proposed 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

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Gloucester, VA [Removed]

Issued in Jamaica, New York, on September 23, 1991.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 91–25548 Filed 10–22–91; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 453

Funeral Industry Practice Trade Regulation Rule; Oral Presentations and Availability of Staff Documents

AGENCY: Federal Trade Commission.

ACTION: Notice of date for oral presentations before the Commission; placement of documents on the rulemaking record.

SUMMARY: The Federal Trade Commission has decided to afford interested parties the opportunity to make oral presentations before the Commission, pursuant to § 1.13(i) of the Commission's Rules of Practice, in the Funeral Rule Review proceeding. The requests of seven prior participants to appear before the Commission have been granted.

The Federal Trade Commission has also placed on the rulemaking record for the Funeral Rule Review the final recommendations of the Bureau of Consumer Protection rulemaking staff and those of the Bureau of Economics staff, as well as the final recommendations of the Office of the Director of the Bureau of Consumer Protection. A staff summary of the comments filed by the public on the reports of the staff and the Presiding Officer is also on the rulemaking record.

DATES: Oral presentations before the Commission will be heard at the Commission's open meeting on November 21, 1991 at 10 a.m.

ADDRESSES: The meeting will be held in room 532, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Daynard, Federal Trade Commission, Washington, DC 20580, at (202) 326–3291.

SUPPLEMENTARY INFORMATION: The Commission published its Notice of Proposed Rulemaking on May 31, 1988. (53 FR 19864). Pursuant to § 1.13(h) of the Commission's Rules of Practice, comments were invited from the public on the final reports of the staff and the Presiding Officer in the Funeral Rule Review proceeding, and interested parties who had previously participated in the proceeding were invited to submit requests to participate in oral presentations, pursuant to § 1.13(i) of the Commission's Rules of Practice. (55 FR 30925). The comment period closed on October 15, 1990.

All comments received were placed on the rulemaking record and the rulemaking staff prepared a summary of those comments. That summary is available for public inspection on the rulemaking record in this proceeding.

The Federal Trade Commission has directed that the final recommendations of the Bureau of Consumer Protection rulemaking staff and those of the Bureau of Economics staff, as well as the final recommendations of the Office of the Director of the Bureau of Consumer Protection, all submitted to the Commission after the conclusion of the post-record comment period specified in § 1.13(h) of the Commission's Rules of Practice, be placed on the rulemaking record in this proceeding for public inspection.

The Federal Trade Commission has decided to grant the requests of seven interested parties to make oral presentations. The prior participants in the proceeding whose requests to appear have been granted include: The National Funeral Directors Association, the National Selected Morticians, the American Association of Retired Persons, the Pre-Arrangement Association of America, the Cremation Association of North America, the American Cemetery Association, and the Monument Builders of North America.

Each participant will be permitted no more than twenty minutes to address comments to the Commission. No additional written comments may be submitted to the Commission. Oral presentations at the meeting must be restricted to the evidence already in the rulemaking record in this proceeding.

The meeting before the Commission will commence at 10 a.m. on November 21, 1991, in room 532, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

List of Subjects in 16 CFR Part 453

Funeral homes, Price disclosure, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-25582 Filed 10-22-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

[WO-680-4130-02 24 1A]

RIN 1004-AB 99

Surface Management Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to propose rulemaking.

SUMMARY: The Bureau of Land Management (BLM) requests public comment and participation on a proposal to amend subpart 3809 of 43 CFR part 3800 that regulates surface disturbing activities on public lands resulting from operations under the the Mining Law of 1872, as amended (30 U.S.C. 22, et seq.). These surface management regulations are authorized by section 302(b) of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1732(b)) and implement the congressional mandate to protect Federal lands from unnecessary or undue degradation. The regulations further provide that reasonable reclamation will be completed on areas disturbed during the search for and extraction of mineral resources.

DATES: Comments should be submitted by January 3, 1992. Comments received or postmarked after this date may not be considered in developing the proposed rule.

During the comment period, the BLM will conduct four public workshops at which it will give a presentation on the issues listed below. Following the presentation, members of the public will be invited to work together in small groups to share their ideas and recommendations on these and other issues to improve the effectiveness of the 3809 regulations. The location, date, and time(s) of the workshops are as follows:

Anchorage, Alaska

December 9, 1991
9 a.m. to 4 p.m.

Spokane, Washington

December 10, 1991
1-4 p.m. and 6:30-9:30 p.m.

Denver, Colorado

December 11, 1991
1-4 p.m. and 6:30-9:30 p.m.

Reno, Nevada

December 12, 1991
1-4 p.m. and 6:30-9:30 p.m.

The BLM will issue press releases specifying the facilities and addresses for each workshop listed above.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior building, 1849 C Street, NW., Washington, DC. 20240. Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Interested parties who wish to discuss this notice or obtain additional information on the locations of the workshops may call Bob Anderson, BLM Deputy Director for Mineral Resources, Federal Building, 2800 Cottage Way, E-2841, Sacramento, California at (916) 978-4735.

SUPPLEMENTARY INFORMATION: The final rule covering the surface management regulations at Subpart 3809 was published on November 26, 1980, and became effective on January 1, 1981. In the preamble of the final rule, the BLM made a commitment to review those regulations after a period of time to evaluate their effectiveness. This commitment was made because there had not previously been specific regulations to govern surface disturbing activities on Federal lands resulting from operations under the Mining Law of 1872, as amended. The regulations in 43 CFR Part 3809 were, in effect, a basic foundation and it was intended that they would be revised should conditions warrant.

The regulations in 43 CFR Part 3809 have generally served the public well over the last 10 years since their implementation and have had a positive impact upon environmental quality. However, various questions related to the effectivess of the regulations have been raised by BLM field offices, the General Accounting Office, Members of Congress, and the general public. Some of the major questions that have surfaced in recent years include:

1. Whether the 5-acre threshold should be modified or eliminated to allow the BLM more authority over notice-level activities. Alternatives to handling this issue include but are not limited to: (1) Requiring all mining operations exceeding casual use to be conducted under a plan of operations, (2) adopting regulations similar to the Forest Service regulation at 36 CFR 228, Subpart A, to provide for the threshold to be based on significant disturbance, or (3) adopting regulations providing criteria for defining a threshold based on significant disturbance.

2. Whether the definition of unnecessary or undue degradation should be revised.

3. Whether the regulations should specify prohibited acts, which would be subject to civil and criminal enforcement.

4. Whether timeframes should be specified within which the BLM must review/process a notice or plan of operations.

5. Whether the regulations should contain additional environmental and reclamation requirements such as abandonment procedures for exploration activities.

6. Whether the regulations should clarify or elaborate the activities authorized under casual use.

7. Whether the regulations should provide for improved coordination and cooperation with States on the requirements of their mining regulations relating to surface management and use to avoid duplication.

Based upon the above questions and issues and in accordance with the BLM's commitment in 1980 to review the regulations after testing their effectiveness, the decision has been

made to review and, if found to be appropriate, the revise the regulations. The BLM's major objective in its regulatory review is to carry out its responsibilities to implement the mining and environmental laws and policies of the United States. In order to do so, these matters must be considered:

1. The BLM's ability/flexibility in the review, approval, oversight, and closure of mining operations;

2. Accountability of mining operators for well-planned proposals and diligent operations; and

3. Environmental impacts and conservation of resources, including reclamation.

Dated: August 28, 1991.

Richard Roldan,

Acting Assistant Secretary of the Interior.

[FR Doc. 91-25460 Filed 10-22-91; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-123; Notice 1]

RIN 2137-AB64

Leakage Surveys on Distribution Lines Located Outside Business Districts

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: As a result of recent accidents, this notice proposes to require operators of distribution lines to use gas detectors in conducting leakage surveys on lines located outside business districts. Some operators now survey these lines for leaks by looking for dead or dying vegetation, a method that is less reliable than using gas detectors. The proposed rule would assure that operators detect all hazardous leaks during leakage surveys of distribution lines outside business districts.

Also, at least every 3 years, operators must reevaluate certain cathodically unprotected metallic pipelines for the presence of active corrosion, using electrical survey or other means if electrical survey is impractical. The means commonly used instead of electrical survey is assessment of leakage survey data. For distribution lines located outside business districts, that data may be as much as 5 years old under the present rule on survey frequency. Exclusive reliance on such old data, however, is not in keeping with the purpose of determining the presence of corrosion at least every 3 years. Thus, to assure that data no more than 3 years old are available for this purpose, RSPA is proposing that the lines involved be surveyed for leaks at least every 3 years.

In addition, for distribution lines of any material located outside business districts, RSPA is seeking comment on (1) the need to shorten the maximum interval between leakage surveys from 5 years to 3 years, and (2) the need for annual leakage surveys on cathodically unprotected metallic lines on which electrical surveys are impractical.

DATES: RSPA invites interested persons to submit comments by December 23, 1991. Late filed comments will be considered as far as is practicable.

ADDRESSES: Send comments in duplicate to the Dockets Unit, room 8417, Office of Pipeline Safety Regulatory Programs, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in room 8419 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366-2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366-4453, regarding copies of this notice or other material in the docket that is referenced in this notice.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 1988, a child was killed and five other family members injured when a house exploded in the Hickman Mills subdivision of Kansas City, Missouri. The National Transportation Safety Board (NTSB) blamed the explosion on ignition of natural gas that had seeped into the house from a broken 1-inch, bare, steel service line, which had been installed in 1955. (Report No. NTSB/PAR-90/01).

This accident was one in a string of similar accidents due to corrosion and other causes during a 7-month period of 1988 and 1989 on service lines operated by the Kansas Power and Light Company (KPL) in Kansas and Missouri. Overall, four persons were killed and 16 were injured, with property damage exceeding $740,000.

At the time of the Hickman Mills accident, KPL had begun a gas detection survey of all its house service lines installed before 1971 (about 359,000), using hydrogen flame ionization (HFI) detection equipment. KPL had started this survey after an earlier accident and meetings with the Kansas Corporation Commission.

The service lines surveyed were mostly steel lines installed before the adoption of part 192. KPL's meter readers had periodically checked the lines for leaks by using the vegetation survey method, which involves looking for dead or dying vegetation over the lines. KPL had never used gas detectors to survey the lines.

The comprehensive HFI survey revealed a higher than expected percentage of leaking service lines. For example, between October 3 and November 10, 1988, the survey revealed 2,156 leaks in 55,213 house service lines. KPL considered 303 of these leaks to need immediate repair.

Responding to these findings, the Kansas Corporation Commission and the Missouri Public Service Commission each adopted stricter rules governing residential distribution lines, including stricter leakage survey requirements. Each State increased the minimum frequency of leakage surveys in residential areas from every 5 to every 3 years and required the use of HFI equipment. In addition, Missouri required annual HFI surveys of cathodically unprotected service lines until the lines are replaced over a 5- or 10-year period. Kansas required vegetation surveys five times a year on all service lines. Other States have also required the use of gas detectors in residential leakage surveys.

As a result of its investigations, NTSB recommended that RSPA take several actions. Two of those are pertinent to this proceeding:

1. Amend the provisions of 49 CFR part 192 that allow alternatives to the use of electric surveys for identifying areas of active corrosion to require that any alternative must provide data equivalent, both in timeliness and quality, to that obtained using electrical surveys. (P-90-17)

2. Amend 49 CFR 192 to disallow the use of vegetation-type surveys for complying with any leakage survey requirement. (P-90-18)

In addition, the National Association of Pipeline Safety Representatives (NAPSR), an organization of State pipeline inspectors, has recommended that operators use gas detectors in leakage surveys on distribution lines. NAPSR believes that vegetation surveys are too imprecise to assure safety in residential areas.

Vegetation Surveys

Vegetation surveys are based on the assumption that natural gas in the subsurface environment displaces air in

the soil. Lack of air inhibits the growth of vegetation, producing an effect visible on the surface. Therefore, by observing areas of dead or dying vegetation over a buried pipeline, operators can infer the existence of a gas leak.

Although the vegetation survey is a well-established technique, it has weaknesses. The main weakness is that it is dependent upon the growth of vegetation. At various times and places, primarily because of seasonal, weather, or climatic conditions, the growth of vegetation may be insufficient to support a proper vegetation survey.

Another weakness of vegetation surveys is that natural gas noticeably affects vegetation only after gas has leaked at a significant rate for a significant time. Thus, vegetation surveys may not discover incipient leaks; and very small, or "pinhole," leaks may not be discovered unless they increase in size.

In contrast, leakage surveys using portable gas detector equipment can be done any time of the year. Although the sensitivity of available gas detectors varies, all equipment can detect the presence of natural gas in the atmosphere without the aid of human judgment. Consequently, gas detector surveys eliminate the uncertainty that accompanies the results of vegetation surveys. Whenever a trained technician does a leakage survey with gas detector equipment, the operator can assume with reasonable certainty that all hazardous leaks will be found.

Leakage Surveys on Distribution Lines Outside Business Districts

Because of the Kansas and Missouri accidents, the State regulatory responses, and the NTSB and NAPSR recommendations, RSPA has reviewed § 192.723, the rule that governs leakage surveys of gas distribution lines. This rule currently is as follows:

Section 192.723 Distribution systems: Leakage surveys and procedures.

(a) Each operator of a distribution system shall provide for periodic leakage surveys in its operating and maintenance plan.

(b) The type and scope of the leakage control program must be determined by the nature of the operations and the local conditions, but it must meet the following minimum requirements:

(1) A gas detector survey must be conducted in business districts, including tests of the atmosphere in gas, electric, telephone, sewer, and water system manholes, at cracks in pavement and sidewalks, and at other locations providing an opportunity for finding gas leaks, at intervals not exceeding 15 months, but at least once each calendar year.

(2) Leakage surveys of the distribution system outside of the principal business areas must be made as frequently as necessary, but at intervals not exceeding 5 years.

Note that the rule requires the use of gas detectors inside business districts (§ 192.723(b)(1)). But, outside these districts, in residential and other areas, the rule allows operators to decide which method of leakage survey to use (§ 192.723(b)(2)). So, outside business districts, operators may currently use vegetation surveys to meet the leakage survey requirement wherever their use is appropriate.

The KPL accidents and associated leakage surveys (discussed above) suggest that if operators use gas detectors to survey leaking distribution lines previously checked only by vegetation surveys, they will find leaks that had previously gone undetected. For any such leaks that are hazardous, it is reasonable to expect that follow-up remedial action would prevent accidents. As discussed below under Rulemaking Analyses, RSPA believes that requiring the use of gas detectors outside business districts would add little to the industry's average survey costs. Therefore, RSPA is proposing to amend § 192.723(b)(2) to require that operators use gas detectors in surveying lines for leaks outside business districts.

Under the proposed amendment, operators who survey their lines for leaks more often than § 192.723(b)(2) requires would still be free to use vegetation surveys for these additional leakage surveys. We see no need to disallow entirely the use of vegetation surveys. They can provide a useful adjunct to leakage surveys required by § 192.723(b)(2).

The proposed amendment would only partially satisfy NTSB's recommendation (described above) that RSPA disallow vegetation surveys in complying with any leakage survey requirement under Part 192. The proposed amendment affects only distribution lines. It does not affect transmission lines and jurisdictional gathering lines, which are subject to the leakage survey requirements of § 192.706. This rule requires the use of leak detection equipment only on lines carrying unodorized gas in Class 3 or 4 locations. Operators use vegetation surveys to comply with § 192.706 for lines carrying odorized gas and lines carrying unodorized gas in Class 1 or 2 locations. RSPA believes the available information does not justify proposing to disallow the use of vegetation surveys under § 192.706.

Despite the weaknesses described above, vegetation surveys have not been a problem under § 192.706 as they have under § 192.723(b)(2). Vegetation surveys are more dependable for transmission and gathering lines than for service lines, primarily because the transmission and gathering lines operate at much higher pressures. Thus, a small hole or crack in a transmission or gathering line will release gas at a far higher rate than will the same size hole in a service line. As a result, vegetation dies sooner and more noticeably. In addition, transmission and gathering lines are mostly in rights-of-way where there is ample vegetation to support a vegetation survey. In areas of sparse vegetation, transmission line leaks are nevertheless detectable because of the higher rate of blowing gas. In addition, because transmission lines are usually not in close proximity to people, there is more latitude to schedule the leak survey during maximum vegetation growth. Thus, vegetation surveys are more suitable for transmission and gathering lines than for residential service lines.

Section 192.723(b) applies to all gas distribution systems that are subject to Part 192. The rule prescribes more frequent leakage surveys for systems located inside business districts (§ 192.723(b)(1)) than for systems located outside such districts (§ 192.723(b)(2)). However, in regulating leakage surveys of systems located outside business districts, § 192.723(b)(2) refers to these systems as systems "outside of the principal business areas." This language could be misinterpreted to mean something other than outside business districts. Thus, we are proposing to amend § 192.723(b)(2) to be consistent with § 192.723(b)(1), by replacing the language, "outside of the principal business areas," with "outside business districts."

Finding Areas of Active Corrosion on Distribution Lines Outside Business Districts

RSPA questions the corrosion control practice of some distribution operators who use leakage survey data collected at 5-year intervals under § 192.723(b)(2) to find areas of active corrosion under § 192.465(e). Section 192.465(e) requires operators to reevaluate certain cathodically unprotected metallic pipelines at least every 3 years. The reevaluation is to learn if areas of active corrosion exist, and protect areas where corrosion is found. Operators must search for areas of active corrosion by electrical survey, or if an electrical survey is impractical (usually because of physical conditions surrounding the line), by studying corrosion and leak history records, by leak detection survey, or by other means. It is common

practice for operators to rely on leakage surveys as an alternative to electrical surveys in complying with § 192.465(e).

The intent of § 192.465(e) is for operators to use data that is not more than 3 years old in reevaluating cathodically unprotected metallic pipelines. Using data more than 3 years old for this purpose provides an opportunity for corrosion to go unchecked longer than the minimum period of reevaluation.

The use of electrical survey data more than 3 years old has generally not been a problem under § 192.465(e). The problem of using untimely data is limited to some distribution lines located outside business districts on which operators collect leakage survey data at 5-year intervals under § 192.723(b)(2). (The maximum interval permitted between leakage surveys on other lines is 15 months under §§ 192.706 and 192.723(b)(1).)

To stop the use under § 192.465(e) of leakage data collected at 5-year intervals, we are proposing a further amendment to § 192.723(b)(2), as set forth below. This proposed amendment would only affect cathodically unprotected metallic distribution lines located outside business areas on which electrical surveys are impractical. For these lines, the amendment would reduce the maximum interval between gas detector surveys (proposed above) from 5 years to 3 years.

This proposal would partially satisfy the NTSB recommendation (described above) that in checking for corrosion, any alternative to an electrical survey provide data equivalent in timeliness and quality to electrical survey data. Under § 192.465(e), operators of distribution systems almost without exception rely on leakage survey data as an alternative to electrical survey data in places where electrical surveys are impractical. The proposed amendment to § 192.723(b)(2) would make the timeliness of these different types of data equivalent for distribution lines outside business districts. However, the quality of leakage survey data cannot be made equivalent to that of electrical survey data for the purpose of corrosion control. Electrical survey data can directly indicate the presence of corrosion, while leakage survey data can only imply the presence of corrosion. At present, we do not believe the quality aspect of NTSB's recommendation can be achieved under the leakage survey alternative.

Frequency of Leakage Surveys on Distribution Lines Outside Business Districts

In 1979, RSPA issued a notice of proposed rulemaking that proposed to increase the frequency of required leakage surveys in certain "high risk" residential locations (Docket PS–62; 44 FR 72201; December 13, 1979). RSPA proposed annual surveys for the most highly populated areas (Class 4 areas under § 192.5), and biannual surveys for the next most populated areas (Class 3 areas under § 192.5).

Most of the comments we received in response to that notice did not support the notion of surveying for leaks at the frequencies proposed. Based on our review of the information then available, we concluded that the number of accidents that might be prevented by surveying at the proposed increased frequencies would not justify the proposed rules on a cost/benefit basis. Thus, we withdrew the proposal (50 FR 10721; March 14, 1983).

However, the experiences in Kansas and Missouri, in which over 300 leaks requiring immediate repair were found, have prompted us to reconsider the need for more frequent leakage surveys of distribution lines located outside business districts. (The minimum 3-year frequency proposed above concerning certain metallic distribution lines is based on an inspection period Part 192 has long established as appropriate for corrosion control, not new information about the benefit of surveying for leaks at more frequent intervals.)

Therefore, RSPA would like to receive comments addressing (1) the need to increase from every 5 years to every 3 years the minimum frequency of leakage surveys on distribution lines of any material located outside business districts, and (2) the need to conduct leakage surveys at least annually (instead of at least every 3 years as proposed by this notice) on cathodically unprotected metallic distribution lines that lie outside business districts and on which electrical surveys are impractical. If the minimum 5-year frequency were increased to every 3 years for distribution lines located outside business districts or the proposed 3-year frequency for cathodically unprotected lines in these areas were increased to every year, how would such an increase affect the present costs of conducting leakage surveys on distribution lines in small and large systems? In addition, we also request information concerning any benefits that would result from such rules. Information concerning accidents that operators might have avoided had they surveyed pipelines for leaks more frequently would be helpful.

Except for certain cathodically unprotected metallic distribution lines, RSPA is not by this notice proposing to increase the minimum frequency of leakage surveys under § 192.723(b)(2). However, based on comments received and further analysis, we may propose a minimum 3-year frequency for all distribution lines located outside business districts. Also, we may propose a minimum annual frequency for all cathodically unprotected distribution lines on which electrical surveys for corrosion are impractical. Any such proposal would be published for comment in a separate notice of proposed rulemaking, either as a supplementary notice in the present proceeding or as part of a different proceeding.

Rulemaking Analyses

E.O. 12291 and DOT Regulatory Policies and Procedures

RSPA has concluded that the proposed amendment to § 192.723(b)(2) is not a major rule under Executive Order 12291. Also, it is not a significant regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

RSPA believes that the proposed amendment would add minimally to the average compliance expense of the present rule. With respect to requiring the use of gas detectors, first, operators of gas distribution systems already have the equipment. They use portable gas detectors in business districts and to check enclosed spaces for gas leaks. Second, in leakage surveys outside business districts, most operators already use gas detectors for mains, because they generally lie beneath paved areas where vegetation surveys are inappropriate. Also, for service lines in these areas, many operators are voluntarily using gas detectors instead of vegetation surveys, and some state laws require operators subject to State jurisdiction to do so. Third, gas detector equipment is easy to use. Personnel operators trained to do vegetation surveys would need only slight, if any, additional training to use the equipment. Finally, although the survey process would take longer with gas detectors, any resulting additional costs would be mitigated by the long time between surveys (maximum interval is 5 years) and the ability to conduct surveys with gas detectors any time of the year.

With respect to surveys of certain unprotected metallic lines at 3-year intervals, the proposed amendment

would merely assure that when operators use leakage data to evaluate these lines for corrosion, the data are not less timely then what § 192.465(e) intends for that purpose. We have not attributed any additional compliance costs to this aspect of the proposed amendment because the use of timely data is an inherent requirement of the existing § 192.465(e)

We believe the proposed amendment does not warrant a more detailed evaluation of its impact. Nevertheless, we would appreciate receiving comments on costs and benefits.

Regulatory Flexibility Act.

Based on the facts available concerning the impact of this proposal, I certify under Section 605 of the Regulatory Flexibility Act that it would not, if adopted as final, have a significant economic impact a on substantial number of small entities.

E.O. 12612

We have analyzed this proposed rule under the criteria of Executive Order 12612 (52 FR 41685; October 30, 1987). We find it does not warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 192

Corrosion, Leakage surveys, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend 49 CFR Part 192 as follows;

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section 192.723(b)(2) would be revised to read as follows:

§ 192.723 Distribution systems: Leakage surveys and procedures.

* * * * *

(b) * * *

(2) A gas detector survey must be conducted outside business districts as frequently as necessary, but at intervals not exceeding 5 years. However, for cathodically unprotected distribution lines subject to § 192.465(e) or which electrical surveys for corrosion are impractical, survey intervals may not exceed 3 years.

Issued in Washington, DC on October 17, 1991.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 91–25394 Filed 10–18–91; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 910640–1243]

RIN 0648–AE37

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this proposed rule governing the Atlantic swordfish fishery to (1) redefine the swordfish management unit to include the entire North Atlantic Ocean north of 5 °N. latitude; (2) establish a minimum size limit of 31 inches (78.7 cm) carcass length or 41 pounds (18.6 kilograms (kgs)) dressed weight for swordfish, with a 15 percent allowance for undersized swordfish based on the number of swordfish landed per trip; (3) establish an annual total allowable catch of 6.9 million pounds (3.13 million kgs) divided into a 6.0 million pounds (2.72 million kgs) annual directed fishery quota and a 0.9 million pounds (0.41 million kgs) annual bycatch quota; the annual directed fishery quota of 6.0 million pounds dressed weight is divided equally into 3.0 million pounds (1.36 million kgs) quotas for each of two semi-annual periods January 1 through June 30 and July 1 through December 31; (4) further subdivide each of the 3.0 million pounds semi-annual quotas into a drift gillnet quota of 40,785 pounds (18,500 kgs) and a quota for longline and harpoon gear of 2,959,215 pounds (1,342,276 kgs); (5) establish a procedure to adjust annual, semi-annual, and gear quotas; (6) specify bycatch limits applying after a gear closure or applying to gear other than harpoon, longline, or drift gillnet; (7) require vessel operators to carry NMFS-approved observers on permitted vessels upon the request of NMFS; (8) prohibit the sale of swordfish caught in the recreational fishery and restrict gear in the recreational fishery to rod and reel; (9) require that dealers obtain a permit before purchasing or receiving swordfish and comply with specific reporting requirements; (10) establish a fee for the issuance of vessel and dealer permits; and (11) make other changes to facilitate the management of the Atlantic swordfish fishery. This action is necessary to respond to the critical condition of the swordfish resource by reducing fishing mortality on the stock to levels that will increase the probability of rebuilding the spawning stock biomass to a level that reduces the likelihood of recruitment failure. The intent of this action is to ensure that the United States fulfills its international obligations as a member of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

DATES: Comments on this proposed rule must be received on or before December 2, 1991.

ADDRESSES: Comments on the proposed rule should be sent to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service (NMFS), 1335 East-West Highway, Silver Spring, MD 20910. Copies of the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis are available from the same Office.

FOR FURTHER INFORMATION CONTACT: Richard B.Stone, 301–427–2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish (FMP) and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation aand Management Act (Magnuson Act). The FMP was prepared by the five fishery management councils with jursidiction over the waters off the east coast of the Atlantic, the Gulf of Mexico, and the Caribbean Sea. The FMP and implementing regulations currently provide for commercial vessel permits and statistical recordkeeping and reporting requirements, which may be changed by regulatory amendment.

The Fishery Conservation Amendments of 1990 (FCA), Public Law 101–627, transferred management authority over the Atlantic swordfish fishery to the Secretary. The Secretary issued emergency regulations under the authority of the Magnuson Act on June 12, 1991 (56 FR 26934, June 12, 1991), that are consistent with the recommendations of ICCAT as discussed below, and that are designed to reduce fishing mortality immediately on the swordfish stock and to initiate rebuilding of the stock. The emergency regulations are effective for 180 days from June 12 through December 9, 1991. The emergency regulations have been corrected twice to revise the minimum size requirement (56 FR 28349, June 20, 1991) and the allocation of the semi-annual directed-fishery quotas between users of drift gillnets and other commercial fishing gear (56 FR 29905, July 1, 1991).

Regulations to govern the Atlantic swordfish fishery also are required under the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.*, as may be necessary to carry out the recommendations of ICCAT. At the November 1990 meeting of ICCAT, member nations recommended, for the first time, international measures to reduce fishing mortality on swordfish. These measures included: (1) A prohibition on taking and landing swordfish less than 25 kg, whole weight, with provision for a 15 percent tolerance per trip for smaller swordfish, and (2) a 15 percent reduction in fishing mortality from 1988 levels on fish 25 kg and larger, whole weight. In order to implement regulations consistent with the ICCAT recommendations as soon as possible, and because the ATCA has no provisions for emergency regulations, emergency regulations were issued under the Magnuson Act as the initial step toward rebuilding the overfished North Atlantic swordfish resource. The emergency regulations were effective on June 12, 1991, and will expire after 180 days on December 9, 1991.

There is not sufficient time for the Secretary to amend the FMP and issue permanent regulations under the authority of the Magnuson Act before expiration of the emergency regulations on December 9, 1991. Expiration of the emergency regulations would create a hiatus in regulating the fishery that could result in the United States not being in compliance with ICCAT recommendations. Consequently, in order to provide for uninterrupted regulation of the fishery in a manner consistent with the ICCAT recommendations, the Secretary proposes to issue regulations governing the fishery under the authority of the ATCA until such time as the FMP is amended and regulations are issued under the authority of both the ATCA and the Magnuson Act. In addition, this rule proposes changes to the requirements for permits, recordkeeping and reporting in 50 CFR Part 630, which are authorized by the FMP. Those regulations implementing the FMP that were promulgated under the Magnuson Act authority prior to the emergency regulations, and that are not replaced or revised by this rule, will remain in effect. Although the management measures in this proposed regulation are, generally, the same as in the emergency regulations, NMFS is proposing several changes that are discusssed below. The major changes proposed by NMFS include the new requirement for dealer permits, recordkeeping and reporting changes for fishermen and dealers, permit fees, a process to adjust quotas, and mandatory at-sea observers.

Background

Status of the Stock

The status of the North Atlantic swordfish stock has been evaluated in a series of stock assessments conducted by the NMFS and ICCAT. The 1989 assessments were reviewed and confirmed as scientifically sound by two independent scientific panels. Results of these assessments have been consistent and indicate that the stock is severely overfished. The 1989 NMFS stock assessment indicated the following: (1) The adult spawning stock biomass in 1987 was only about 40 percent of the 1978 level and has continued to decline; (2) the 1989 fishing mortality rate was approximately four times higher than the $F_{0.1}$ target rate; (3) the mean size of swordfish in the catch has declined continuously from 115 pounds (52.2 kgs) dressed weight in 1978, to 60 pounds (27.2 kgs) dressed weight in 1988; and (4) continuing high fishing mortality would result in further declines in the spawning stock, placing the stock in jeopardy of recruitment failure. $F_{0.1}$ is a fishing mortality rate at which the increase in yield from the fishery per increased fishing effort is 10 percent of what it would be if fishing mortality was very low. $F_{0.1}$ is frequently used as a target for effective fishery management. At $F_{0.1}$, the stock should produce near maximum sustainable yield.

The results of the 1990 ICCAT assessment, the most recent assessment available, were consistent with these findings. Independent stock assessment scientists have stated that fishing at current levels could put the swordfish population in danger in a short period of time and have suggested prompt, substantial reductions in fishing mortality.

Management Measures

Management Unit

The management unit is proposed to change from the western North Atlantic swordfish stock, as specified in the current FMP and implementing regulations, to the entire North Atlantic swordfish stock north of 5° N. Latitude, in order to facilitate implementation of ICCAT recommendations for swordfish management. This change is consistent with the majority of scientific opinion and is the preferred hypothesis of ICCAT swordfish assessment scientists.

The proposed change in the management unit is not expected to have a substantial impact on participants in the fishery because few U.S. vessels operate outside the western North Atlantic and few additional U.S.-harvested swordfish will be subject to the change in the management unit.

Quotas

Annual Quotas

The proposed annual total allowable catch (TAC) for the U.S. fishery is 6.9 million pounds (3.13 million kgs) dressed weight, which is a 35 percent reduction in harvest compared to 1988 and 1989 landings. The annual TAC was determined by examining the effect of the ICCAT swordfish recommendations, based on the following assumptions: (1) A Single North Atlantic swordfish stock hypothesis; (2) fish greater than the minimum size (25 kg) are equivalent to ages 3 and older (these will be referred to as large fish); (3) Spain and the United States will reduce the fishing mortality rate-at-age on large fish by 15 percent from the 1988 levels while the mortality rate-at-age on large fish by all other nations combined will be maintained at 1989 levels (the last year for which we have data); and (4) all nations will adhere to the minimum size and to the trip allowance for undersized swordfish (the 15 percent tolerance for small fish was calculated for the United States, Spain, and all other nations combined). Based upon these assumptions, the status quo during the 1990 fishing year, and recruitment equal to the average of the available time-series, projections were made of the swordfish population to estimate the expected yield to the U.S. fishery in 1991. The annual TAC of 6.9 million pounds (3.13 million kg) represents a significant step toward reducing fishing mortality to the $F_{0.1}$ target level.

The annual TAC is divided into a 6.0 million pounds (2.72 million kgs) annual directed-fishery quota and a 0.9 million pounds (0.41 million kgs) annual bycatch quota.

The bycatch quota is based upon an estimate of the swordfish bycatch in fisheries targeting other large pelagic species (e.g., tuna and sharks). After a directed-fishery quota is reached, or is projected to be reached, the fishery subject to that quota will be closed. Vessels subject to the closure will be restricted to the two-fish-per-trip bycatch limit, and all swordfish will be counted against the bycatch quota. Thus, the bycatch quota will allow for the retention of some swordfish that are captured and brought to the vessel dead while fishing for other species after the directed swordfish fishery has been closed. After the bycatch quota is reached, or is projected to be reached,

possession and retention of Atlantic swordfish will be prohibited.

Semi-Annual Quotas

The annual directed-fishery quota is divided into two 3.0 million pounds (1.36 million kgs) semi-annual quotas for each of the 6-month periods, January 1 through June 30 and July 1 through December 31. Separation of the annual quota into two semi-annual time periods will distribute the harvest impacts in-time over a broad range of size and age classes. Separation of the quotas also serves to distribute the harvest geographically between fisheries off the Northeast Atlantic coast and those in the Southeast Atlantic, Gulf of Mexico, and Caribbean areas. The majority of swordfish landings from January through June occur in the southern area and the majority of landings from July through December occur in the northern area. Vessels in the directed swordfish fishery may fish in any area as long as an applicable quota is available. Large, highly mobile vessels are expected to have some inherent advantages in competing for the available quotas.

Gear Quotas

Each of the 3.0-million pound semi-annual quotas is further subdivided into a drift gillnet quota of 40,785 pounds (18,500 kgs) and a quota for longline and harpoon gear of 2,959,215 pounds (1,342,276 kgs). The 6.9 million pounds TAC was computed based on a 15 percent reduction in the fishing mortality of age 3+ swordfish relative to the 1988 level with a 15 percent by number landed bycatch tolerance for fish aged 2 or less. For consistency with the ICCAT recommendation that the fishing mortality rate be reduced from the 1988 level, NMFS proposes to allocate the directed-fishery quota based on 1988 harvest levels, between allowable traditional gear (longline and harpoon) and drift gillnets. This is discussed further below.

The estimated gillnet catch of undersized swordfish (age 2 or less) in 1988 was 18.8 percent, by number, of the total gillnet catch. The estimated yield by weight of undersized swordfish to the gillnets was estimated as 6.7 percent of the total gillnet yield by weight. The estimated proportion of gillnet landings of fish aged 3 or more is thus 93.3 percent of the gillnet total yield.

Assuming the age-specific selectivity by gillnets in 1988, the estimated yield of age 3+ swordfish to gillnets was 112,851 lbs (51,188 kgs), dressed weight (93.3% of 120,955 lbs (54,864 kgs)), with an estimated average size of 125.1 lbs (56.7 kgs), dressed weight. This corresponds to an estimated 250 fish aged 3, 223 fish aged 4, and 430 fish aged 5+ taken by gillnets in 1988, and represents approximately 0.7, 1.2, and 2.2 percent of the U.S. catch of fish aged 3, 4, and 5+, respectively, in 1988. The estimated 1988 gillnet catch of fish aged 2 or less was 8,088 lbs (3,669 kgs), dressed weight (6.9 percent of 120,955 lbs (54,864 kgs)) with an estimated average size of 38.7 lbs (17.6 kgs), dressed weight. This corresponds to an estimated 209 fish aged 2 or less (39 age 1 and 170 age 2), and represents approximately 0.2 percent of the 1988 U.S. catch of fish aged 2 or less (0.12 percent of age 1 and 0.3 percent of age 2 fish caught by U.S. fishermen in 1988). The 1991 U.S. TAC of 6.9 million pounds (3.13 million kgs) corresponds to a total U.S. projected catch of 72,044 fish aged 3+ (45,711 fish aged 3, 16,511 fish aged 4, and 9,822 fish aged 5+) and a landed catch of 12,632 fish aged 2 or less (4,373 fish aged 1 and 8,259 fish aged 2). For consistency with the U.S. fishing pattern from the ICCAT base year of 1988, the projected catch (in numbers of fish) by gillnets in 1991 would be 745 fish aged 3+ (319 fish aged 3 (0.7 percent of 45,711), 202 fish aged 4 (1.2 percent of 16,511) and 224 fish aged 5+ (2.2 percent of 9,822)) with a projected average size of 107.9 lbs (48.9 kgs), and a projected landed catch of 30 fish aged 2 or less (5 fish aged 1 (0.12 percent of 4,373) and 25 fish aged 2 (0.3 percent of 8,259)) with a projected average size of 38.5 lbs (17.5 kgs), dressed weight, for a total annual yield of 81,569 lbs (36,999 kgs), dressed weight.

Allocations

Longline, Harpoon, Gillnet

NMFS has allocated the directed-fishery quotas to users of longlines, harpoons, and drift gillnets. Although drift gillnets have been used in the fishery since 1980, most of the current driftnetters have been in the fishery for 3 years or less. In contrast, harpooning began in the late 1800s and dominated the fishery until 1962, when longlines were introduced and became the principal gear.

Participation and landings by drift gillnet vessels were very low (2 or 3 vessels and less than 100,000 pounds (45,359 kgs)) until the late 1980s. Drift gillnet vessels landed 120,955 pounds (54,864 kgs) in 1988. The fishery expanded significantly in 1989, when landings reached 868,055 pounds (393,743 kgs), dressed weight, and according to swordfish logbook reports, 20 vessels used drift gillnets. In 1990, a total of 25 gillnet vessels were active in the fishery. Reported 1990 gillnet landings were 845,645 pounds (383,578 kgs), dressed weight.

Atlantic drift gillnet landings have been confined largely to the northeastern states. Prior to 1989, drift gillnets accounted for less than 3 percent of U.S. swordfish landings north of North Carolina and about 1 percent of total U.S. Atlantic landings. In 1989, the percentages increased to 19.2 percent of landings north of North Carolina and 8.2 percent of total Atlantic landings. Preliminary 1990 data indicate drift gillnet landings comprised approximately 22 percent of landings north of North Carolina and 9.5 percent of total Atlantic landings.

Given the relative efficiency of drift gillnets, if no separate gear quota were established, the drift gillnet share of the available landings under the overall reduced quota would be expected to increase further to the detriment of fishermen using the more traditional harpoon and longline gear. Since most drift gillnet landings occur from June through November, it is likely that a disproportionate share of the July-December directed-fishery quota would be taken by drift gillnet vessels. Drift gillnet landings at the 1989 level would account for 28 percent of the 1991 July-December directed-fishery quota. Allowing this redistribution of the available quota would adversely affect fishermen using the more traditional harpoon and longline gear. The reductions in the TAC necessary to begin rebuilding the overfished swordfish resource already will substantially reduce landings by fishermen using traditional gear, an impact that would be compounded by allowing the small, non-traditional drift gillnet fishery to continue to harvest a disproportionate share of the quotas.

Best available information, based on observer data, indicates that the swordfish drift gillnet fishery has a high known rate of incidental marine mammal mortality. Observer data from 27 trips (123 sets) between August 1989 and December 1990 documented 124 marine mammal mortalities, averaging 1.01 mortalities per set. At least eight species of the suborder Odontoceti (dolphins and beaked whales) were involved. Observer data from January 1991 to June 1991 documented 72 marine mammal mortalities in 69 sets observed. Although extrapolation of observed mortality rates to the entire drift gillnet fleet would be speculative, clearly the total marine mammal mortality associated with this gear is high. Reducing the gillnet fishery's effort from recent levels should reduce considerably marine mammal mortality. NMFS will

continue to monitor the rate of marine mammal mortality.

The reduction in overall swordfish catch necessary to comply with the ICCAT recommendations is expected to result in aggregate annual net revenue losses for the dedicated swordfish longline fleet amounting to an estimated $6.2 million. Due to the rapid growth in the drift gillnet fishery since 1988, the reduction from the 1988 level of landings for drift gillnets represents a large reduction from the 1990 level of gillnet landings (from 845,645 pounds in 1990 to about 81,000 pounds under the quota). A substantial portion of the value associated with these foregone landings is likely to be lost to the gillnet fishermen. The amount of the loss will depend on the success of these fishermen in taking the existing quota, employing alternative gear to target swordfish, or switching to alternative fisheries, and the costs associated with these alternatives. In 1989, for example, 11 vessels reported fishing for other species with bottom trawl gear during the winter off-season. Refitting for longline fishing would cost drift gillnet vessel owners approximately $30,000–$50,000 per vessel to convert. Most likely, it would not be efficient for the majority of the 25 drift gillnet vessels to remain in the gillnet fishery.

One benefit of rebuilding the swordfish stock will be that future harvesting costs should be lower because, in theory, less effort would be needed to maintain the same level of catch as in reduced populations. To realize these benefits, however, the capability of the fishing fleet to increase its fishing capacity (e.g., additional vessels and/or technology) will need to be controlled.

Other Gear

Since the emergency rule was implemented, a new gear, the pair trawl, has been introduced into the North Atlantic swordfish fishery. Currently, there are reports of three pairs of vessels active in the fishery, but numerous other fishermen have indicated interest in converting to pair trawling as soon as possible. Most of the pair trawling is believed to be occurring in the area between Hudson's Canyon and the Canadian border (an area also fished by longline vessels) at ocean depths between 150 and 200 fathoms. Early information available for pair trawl trips shows that individual landings in excess 20,000 pounds of swordfish and 30,000 pounds of tuna have been made. Trip length is believed to be between 1 week and 10 days; however, this has not been confirmed. Most of the swordfish averaged well in excess of 100 pounds dressed weight.

Introduction of this new gear emphasizes the issue of fair and equitable fishery allocations. Based on the limited information available, it appears that pair trawling has the potential to harvest substantial quantities of swordfish in short periods of time. If use of the gear expands as initial information suggests, this new gear could easily harvest a significant portion of the limited quota available and thus adversely affect the previously established fishery participants. Presently, there is little or no information available on pair trawl bycatch or on the potential for gear conflicts with other fishermen. While NMFS proposes no directed fishery quota for pair trawls or commercial fishing gear other than longline, harpoon, and drift gillnets, NMFS is interested in receiving public comment on the option of establishing experimental fisheries for other gear as a means of collecting information on the effects of different harvesting methods for swordfish (i.e., information would include incidental catch of other species, effects on marine mammals and protected species, efficiency of harvesting, size composition of the catch, etc.).

To ensure an equitable allocation of the limited directed commercial fishery quota to the previously established fishery participants, this proposed rule specifies that only those vessels using harpoon, longline, or drift gillnet gear may participate in the directed fishery for North Atlantic swordfish. The allocation of the directed fishery quota, established by the June 12, 1991, emergency rule, between harpoon and longline vessels and drift gillnet vessels remains unchanged. Vessels using or having aboard gear other than harpoon, longline, or gillnet, including, but not limited to, pair trawls, will not be permitted to fish for swordfish or to possess or land swordfish in excess of the bycatch limit of two fish per trip.

Prohibiting use of pair trawls for directed swordfish fishing is consistent with the provision for a limited commercial quota for drift gillnets. When significant catch reductions are necessary to rebuild a fishery resource, the adverse economic impacts on longer-term participants in the fishery should not be exacerbated by allowing introduction of a new fishing gear, particularly if it can take a significant portion of the allowable catch. Also, vessels using gear other than harpoon, longline, or drift gillnet had no record of participation in the directed swordfish fishery prior to or in 1988, the base year for determining catch reductions and commercial fishery allocations. Accordingly, applying consistently the management objective of a 15 percent reduction in fishing mortality from 1988 levels for swordfish 25 kg and larger, gear other than harpoon, longline, or drift gillnet would receive no allocation of the directed fishery quota.

To ensure that any swordfish caught by pair trawls or commercial gear other than harpoon, longline, or gillnet, are not counted against the directed fishery quotas, the proposed regulations require that any fish landed by vessels using gear other than harpoon, longline, or drift gillnet be counted as bycatch and thus limited to the bycatch trip limit. This bycatch limit will apply throughout the entire fishing year to swordfish catches and landings by vessels possessing commercial fishing gear other than harpoon, longline, or drift gillnets.

Adjustments to Quotas

NMFS recognizes that as new information becomes available regarding catch and effort in the fishery and the size and composition of the North Atlantic swordfish stock, it will be necessary to revise the TAC and quotas in order to remain consistent with the ICCAT recommendation for a 15 percent reduction in fishing mortality from 1988 levels on fish 25 kilograms round weight and larger. Thus, NMFS proposes a regulatory framework process that will allow the Secretary to adjust the TAC, annual, semi-annual, and gear quotas based on the best available scientific information regarding the status of the North Atlantic swordfish stock and the swordfish fishery. As the annual quotas are adjusted for scientific reasons or in response to changes in the fishery, the gear quotas will continue to represent the same percentage of the annual directed-fishery quota after the adjustment as before the adjustment. The proposed action also allows NMFS, at the discretion of the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), to appoint an assessment review panel to reevaluate periodically the condition of the swordfish stock based on the most recent stock assessment information from ICCAT and other sources and provide estimates of the annual allowable biological catch and total allowable catch for the U.S. Atlantic swordfish fishery.

Closures

The effective date of a fishery closure will be no earlier than 5 days after the date the notice of closure is filed at the Office of the **Federal Register**. Thus, after NMFS files a notice of a gear closure, vessels at sea with that gear and with swordfish aboard in excess of the bycatch trip limit will have at least 5 days to return to port and off-load their swordfish. The requirement of at least 5 days' notice also applies after the annual bycatch quota is reached and possession and retention of swordfish is prohibited. Broadcasts of the closure notice over NOAA Weather Radio and, to the extent practicable, single side-band radio will be used to ensure immediate notice of this action as soon as the effective date of a closure is known.

Minimum Size Limit

The proposed minimum size limit of 31 inches (78.7 cm) carcass length or 41 pounds (18.6 kilograms) dressed weight (equivalent to 25 kg, whole weight) is consistent with the recommendation of ICCAT for a minimum size of 25 kilograms, round weight. To facilitate enforcement of the minimum size limit, NMFS is proposing that the minimum weight limit of 41 pounds dressed weight only apply when swordfish are landed and weighed at the location of landing. The 31-inch limit was determined based upon the probability that about 90 percent of the swordfish landed that measure 31–inches dressed carcass length would equal or exceed 25 kilograms round weight. Forty-one pounds is the conversion of 25 kilograms round weight to pounds dressed weight. The minimum size limit will decrease fishing mortality on 1 and 2-year-old swordfish; increase yield per recruit; and contribute to increasing the spawning stock biomass. The size limit is expected to reduce the fishing mortality rate based on number of small fish landed to about 30 percent of the 1989 rate. However, the realized 1991 mortality rates on small fish could be substantially different, depending on discard mortality rates and fleet behavioral practices. NMFS plans to utilize at-sea observers to assess these factors. The proposed minimum size limit should provide positive benefits due to considerable price differentials for larger fish. It also can be expected that future yield will return a higher value because they will be composed of larger fish. Areas where small fish comprise a high proportion of landings are expected to be most affected by the minimum size limit. Small vessels with more limited mobility are also likely to be affected, especially if located in areas where small fish predominate.

Consistent with the ICCAT recommendations, NMFS is proposing a trip allowance for undersized swordfish of up to 15 percent of the total number of swordfish landed per trip to reduce waste of undersized swordfish that otherwise would have to be discarded. In addition, because some swordfish caught will have been attacked by sharks, landing of shark-mutilated swordfish carcasses will be allowed. Any shark-mutilated carcass less than the minimum size limit will be counted against the 15 percent trip allowance for undersized swordfish.

Bycatch Limit

NMFS proposes a bycatch limit that will apply in the following manner: (1) Throughout the year to all vessels possessing or using commercial gear other than harpoon, longline, or drift gillnet; (2) to all vessels possessing or using harpoon, longline, or gillnet after the attainment of the appropriate gear quotas, and (3) to all vessels after closure of the directed swordfish fishery. This bycatch limit will allow an owner or operator of a vessel to possess or land two swordfish unless the vessel uses or has aboard harpoon gear in which case no swordfish may be possessed or landed. Two swordfish is the current estimate of the average number of swordfish larger than 25 kg taken incidentally per trip in the tuna longline fishery. The bycatch limit will reduce waste of swordfish that otherwise would have to be discarded and will ensure that landings under the bycatch trip limit are made only by vessels truly catching swordfish as bycatch. There is no bycatch allowance for a vessel with a harpoon because this gear is selective and does not involve a legitimate incidental catch. To provide effective enforcement of the bycatch limit, minimum size limit, and other provisions, this rule proposes to prohibit the transfer of swordfish from one vessel to another.

Mandatory At-sea Observers

For effective management of the swordfish fishery, additional data are needed, particularly regarding the mortality of discarded fish—either undersized or in excess of the bycatch trip limit. Better data are also needed on the average number of swordfish taken incidentally per trip in the tuna longline and other fisheries. These data can best be provided by on-board observers. NMFS proposes that the owner or operator of any permitted swordfish vessel be required to carry a NMFS-approved observer if requested to do so in writing by the Science and Research Director. NMFS expects to select approximately 20 percent of the fleet for observer coverage, if a sufficient number of observers is available. The placement of any NMFS-approved observers aboard swordfish vessels pursuant to this rule will require the participating vessel owner or operator to: (1) Provide the observer free accommodations and food equivalent to that provided the crew; (2) allow the observer access to and use of the vessel's communications equipment and personnel for transmitting and receiving messages related to observer duties; (3) allow the observer access to and use of navigating equipment and personnel to determine vessel position; (4) allow the observer access to the vessel's bridge, working decks, holding bins, weight scales, holds, and other spaces used to hold, process, weigh, or store fish; and (5) allow the observer to inspect and copy the vessel's log, communications log, and any records associated with the catch and distribution of fish. Vessel operators selected and notified in writing by the Science and Research Director that they are to carry an observer will be required to provide the Science and Research Director with 10 days notice, in writing, prior to the departure of the vessel so that arrangements to embark an observer can be made.

Recreational Fishery

Annual recreational landings of swordfish are estimated to be fewer than 50 fish. Because, historically, recreational fishing mortality has been negligible, quotas on the recreational fishery are considered inappropriate at this time. However, NMFS proposes to prohibit recreational fishermen, whose catch will not be counted against the commercial quotas, from selling their swordfish catch. Prohibiting the sale of a recreationally caught swordfish will maintain the traditional difference between recreational and commercial swordfish fishermen. The impacts of this measure are expected to be negligible. Recreational swordfish fishermen are defined in this rule to be those possessing only rod and reel gear aboard their vessel.

Dealer Permits and Reporting Requirements

NMFS proposes to require that dealers purchasing or receiving swordfish obtain a dealer permit. The purpose of dealer permits is to enable NMFS to provide dealer reporting forms to all swordfish dealers and to facilitate the enforcement of current and proposed

dealer reporting requirements by producing a list of dealers who are required to report swordfish landings within a specified time period. This requirement would result in approximately 277 dealers being required to obtain permits. The estimated time to complete an application for a dealer permit is a maximum of 5 minutes per permit. This includes the time for reviewing instructions and completing and reviewing the application forms. In addition, NMFS proposes to charge a fee for each dealer permit to cover the administrative costs of issuance. NMFS estimates the dealer permit fee will be approximately $34.

This rule proposes annual and semi-annual quotas to regulate the harvest of swordfish by different gear types. As a consequence, NMFS is required to monitor closely the progress of the fishery in order to institute fishery closures before quotas are exceeded. Current dealer reporting requirements require dealers to report landings by the 14th day of the month after the month in which swordfish are landed. NMFS has determined that more frequent reporting of landings is necessary to monitor quotas effectively. Therefore, NMFS proposes to revise the current dealer reporting requirements by increasing the frequency of submission of reports to twice monthly, on the 5th and 20th day of every month. Reports due on the 5th day of the month are for landings between the 16th and last day of the previous month and reports due on the 20th day are for landings during the first 15 days of the current month. Even if no swordfish is bought or received, twice monthly negative reports will be required. The proposed increase in the frequency of dealer reporting is estimated to require 277 individual dealers to spend about 30 minutes to complete each bimonthly report if swordfish were purchased or received during the reporting period, and only about 3 minutes to complete a negative report if no swordfish were purchased or received.

Other Management Measures

The 1990 amendments to the Magnuson Act prohibited the use of drift gillnets longer than 1.5 miles in U.S. waters. NMFS has included this restriction in this rule.

NMFS also proposes a process for implementation of section 6(c) of the ATCA with respect to swordfish import controls. NMFS proposes to amend and apply to the import of swordfish from the North Atlantic swordfish stock §§ 285.80 through 285.86 in title 50 of the Code of Federal Regulations, which specify procedures for the establishment of restrictions on imports of tuna.

NMFS also proposes certain changes to the reporting requirements for the owners and operators of swordfish fishing vessels. All fishing vessel owners and operators will now be required to obtain a daily logbook form from the Science and Research Director and to record information on the vessel's swordfishing effort, catch, and disposition of catch in the logbook. The daily logbook forms, along with copies of the tally sheets for all swordfish off-loaded, must be submitted to the appropriate Science and Research Director postmarked no later than 3 days after sale of the swordfish. In addition, NMFS proposes to charge a fee for the issuance of fishing vessel permits, not to exceed the administrative cost of issuing the permits. NMFS estimates the fee will be $34.

Classification

This proposed rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq.*, and the Magnuson Act, 16 U.S.C. 1801 *et seq.* The Assistant Administrator has determined that this proposed rule is necessary to implement the recommendations of ICCAT and is necessary for management of the Atlantic swordfish fishery.

An environmental assessment (EA), prepared by the Assistant Administrator, concludes that there will be no significant impact on the human environment as a result of this action. A copy of the EA is available (see **ADDRESSES**).

The Assistant Administrator has determined, based on the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this rule, that this is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) as part of the RIR/IRFA which concludes that this proposed rule, if adopted, would have significant effects on small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* According to the IRFA prepared for this action, the reduction in overall swordfish catch necessary to comply with the ICCAT recommendations is expected to result in aggregate annual net revenue losses for the dedicated swordfish longline fleet amounting to an estimated $6.2 million. Approximately 25 drift gillnet vessels will experience significant loss of income as a result of the reduction in annual drift gillnet landings from a high of 868,055 pounds in 1989 to the 81,570 pounds proposed by this rule. The amount of the loss will depend on the success of these fishermen in taking the existing level of quota, employing alternative gear to target swordfish, or switching to alternative fisheries, and the costs associated with these alternatives. Although the reductions in swordfish catches necessary to initiate stock rebuilding will have a significant adverse impact on individuals associated with the commercial swordfish industry as well as consumers in the short term, the long-term benefits associated with a healthy, stable resource comprised of swordfish of a larger average size will outweigh the initial losses. You may obtain a copy of this analysis from NMFS at the address listed above.

The Assistant Administrator has determined that this proposed rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the Atlantic, Gulf of Mexico, and Caribbean states that have approved coastal zone management programs. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule contains four collection-of-information requirements subject to the Paperwork Reduction Act. The first would require a dealer purchasing or receiving Atlantic swordfish to have a dealer permit issued by NMFS. The second would revise the current requirement that dealers submit landing reports to NMFS by the 14th day of the month following landing to twice a month, on the 5th and 20th days of each month. The dealer permits would require a maximum of 5 minutes to apply for each permit. The proposed increase in the frequency of dealer reporting is estimated to require 277 individual dealers to spend about 30 minutes to complete each bimonthly report if swordfish were purchased or received during the reporting period, and only about 3 minutes to complete a negative report if no swordfish were purchased or received. The total number of reports is estimated to be 6,648 and the total reporting burden is estimated to be 1,849 hours. This includes the time

for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The third revises current reporting requirements for fishing vessel owners and operators by requiring all owners and operators to obtain and maintain daily fishing logbooks, and return daily logbook records, along with copies of the tally sheet with individual fish weights, no later than 3 days after swordfish are landed and off-loaded. NMFS estimates the total number of reports submitted will be approximately 20,900, and the total reporting burden to obtain and maintain daily logbooks, and to return reports after every off-loading, will be 2,107 hours, or 6 minutes per request. The fourth would require fishermen, who have been notified in writing that they have been selected by the Science and Research Director to carry a NMFS-approved observer, to notify the Science and Research Director in writing 10-days prior to the beginning of the fishing trip so that an observer can be assigned to the vessel. This requirement is intended to apply only to about 20 percent of the swordfish fleet and will require about 10 minutes to complete each notification. A request to collect this information has been submitted to OMB for approval. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing burden, to the National Marine Fisheries Service, Office of Fisheries Conservation and Management, 1335 East-West Highway, Silver Spring, MD 20910, Attention: Richard B. Stone, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20235, Attention: Desk Officer for NOAA. Requests to collect this information have been submitted to the Office of Management and Budget for approval.

NMFS is consulting under section 7 of the Endangered Species Act concerning the potential impact of this fishery and of the proposed management measures on endangered and threatened species. The consultation will be completed prior to final action on this proposed rule. Sea turtles are known to become entangled in both swordfish gillnet and longline gear, and any incidental taking of sea turtles would need to comply with the terms and conditions established in the consultation.

Marine mammals are also known to be taken in both gillnet and longline gear. Under the 1988 Amendments to the Marine Mammal Protection Act, it is unlawful to engage in any fishery that has been classified as category I (fisheries with a frequent incidental take of marine mammals) or II (fisheries with an occasional incidental take of marine mammals) unless the vessel owner has registered and received an Exemption Certificate. Since the Atlantic swordfish drift gillnet fishery is a category I fishery and the Atlantic swordfish longline fishery is a category II fishery, all vessel owners in this fishery will need to register for an exemption under the Marine Mammal Protection Act. However, under the Endangered Species Act, there is no exemption for the taking of endangered marine mammals.

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

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: October 17, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 630 is proposed to be amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 is revised to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. Section 630.1 is revised to read as follows:

§ 630.1 Purpose and scope.

(a) The purpose of this part is to implement—

(1) The Fishery Management Plan for the Atlantic Swordfish Fishery under the Magnuson Act; and

(2) The recommendations of the International Commission for the Conservation of Atlantic Tunas, as they relate to conservation and management of swordfish, under the Atlantic Tunas Convention Act.

(b) This part governs the conservation and management of the North Atlantic swordfish stock.

(c) Regulations governing fishing by vessels other than vessels of the United States shoreward of the outer boundary of the EEZ are published at 50 CFR part 611 subpart A, and §§ 611.60 and 611.61.

3. In § 630.2, the definitions for *"Commercial fisherman"*, *"Councils"*, *"High flyer"*, and *"Western North Atlantic swordfish stock"* are removed; the definitions for *"Carcass or dressed"* and *"Science and Research Director"* are revised; and new definitions for *"Drift gillnet"*, *"Land or landed"*, *"North Atlantic swordfish stock"*, *"Recreational fishery"*, and *"Trip"* are added, in alphabetical order, to read as follows:

§ 630.2 Definitions.

* * * * *

Carcass or *dressed* means a fish that has been gutted and the head and fins have been removed, but is otherwise in whole condition.

* * * * *

Drift gillnet, sometimes called a drift entanglement net or drift net, means a flat net, unattached to the ocean bottom, whether or not it is attached to a vessel, designed to be suspended vertically in the water to entangle the head or other body parts of fish that attempt to pass through the meshes.

* * * * *

Land or *landed* means to arrive in port or at a dock, berth, beach, seawall, or ramp.

North Atlantic swordfish stock means those swordfish in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude. The North Atlantic swordfish stock is the management unit for these regulations.

* * * * *

Recreational fishery means the harvest of swordfish from a vessel with only rod and reel fishing gear aboard.

* * * * *

Science and Research Director means the Science and Research Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305–361–5761, or a designee.

* * * * *

Trip means a fishing trip, regardless of number of days duration, that begins with departure from a port, dock, berth, beach, seawall, or ramp and that terminates with return to a port, dock, berth, beach, seawall, or ramp.

* * * * *

4. Section 630.4 is revised to read as follows:

§ 630.4 Permits and fees.

(a) *Applicability.*

(1) *Annual vessel permits.*

(i) Except as provided by paragraph 630.4(a)(1)(ii) of this section, the owner of a vessel of the United States—

(A) That fishes for or possesses swordfish from the North Atlantic swordfish stock, or

(B) That takes such swordfish as bycatch, whether or not retained—must have an annual vessel permit.

(ii) The owner of a vessel fishing for swordfish from the North Atlantic swordfish stock—

(A) In the recreational fishery, or

(B) Shoreward of the outer boundary of the EEZ around Puerto Rico and the Virgin Islands with only handline gear aboard—is exempt from the requirement to have a permit.

(2) *Annual dealer permits.* A dealer who receives swordfish harvested or possessed by a vessel of the United States must have an annual dealer permit.

(b) *Application for an annual vessel permit.* (1) An application for an annual vessel permit under this section must be signed by the owner and submitted to the Regional Director. The application must be submitted at least 30 days prior to the date on which the applicant desires to have the permit made effective. An application form is available from the Regional Director and must contain the following information:

(i) Vessel owner's name, mailing address, and telephone number;

(ii) If the vessel owner is a corporation or a partnership, the names, addresses, and dates of birth of the two principal shareholders or partners;

(iii) Vessel's name, official number, home port, net tonnage, length, and type and amount of gear used;

(iv) Any other information concerning vessel and gear characteristics requested by the Regional Director; and

(v) Any other information requested by the Regional Director that may be necessary for the issuance or administration of the permit.

(2) The application must be accompanied by a copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(c) *Application for an annual dealer permit.* (1) An application for a dealer permit must be submitted and signed by the dealer or an officer of a corporation acting as a dealer. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of each state wholesaler's license held by the dealer;

(ii) Business name, mailing address including zip code of the principal office of the business, and employer identification number, if one has been assigned by the Internal Revenue Service;

(iii) The address of each physical facility at a fixed location where the business receives fish;

(iv) Name, official capacity in the business, mailing address including zip code, telephone number, social security number, and date of birth of the applicant; and

(v) If the applicant is a corporation or partnership, the names, addresses, and dates of birth of the two principal shareholders or partners.

(d) *Fees.* A fee is charged for each annual vessel permit issued under paragraph (b) of this section and for each annual dealer permit issued under paragraph (c) of this section. The amount of the fees is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fees may not exceed such cost and are specified on each application form. The appropriate fee must accompany each application.

(e) *Issuance.* (1) The Regional Director will issue a permit at any time to an applicant if the application is complete. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified at § 630.5.

(2) Upon receipt of an incomplete application the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 60 days of the date of the Regional Director's letter, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the remainder of the period for which it is issued unless revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* (1) A vessel permit issued under paragraph (b) of this section is not transferable or assignable. A person purchasing a permitted vessel who desires to conduct activities for which a permit is required must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of a signed bill of sale.

(2) A dealer permit issued under paragraph (c) of this section may be transferred upon sale of the dealer's business. Information on the original application that is changed as a result of the sale must be reported to the Regional Director within 15 days of any such change. A permit is void if a change of information is not reported.

(h) *Display.* A vessel permit issued under paragraph (b) of this section must be carried on board the fishing vessel and such vessel must be identified as provided for in § 630.6. A dealer permit issued under paragraph (c) of this section must be available on the dealer's premises. The operator of a fishing vessel or a dealer must present the permit for inspection upon request of an authorized officer.

(i) *Sanctions and denials.* A permit issued pursuant to this section may be suspended or revoked according to the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(j) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the amount of which is stated on the application form, must accompany each request for a replacement permit.

(l) *Change in application information.* The owner of a vessel with a permit or a dealer with a permit must notify the Regional Director within 15 days after any change in the application information required by paragraph (b) or (c) of this section. The permit is void if any change in the information is not reported within 15 days.

5. Section 630.5 is revised to read as follows:

§ 630.5 Recordkeeping and reporting.

(a) *Fishing vessel reports.* (1) An owner or operator of a vessel for which a permit has been issued under § 630.4(b) must ensure that a daily logbook form is maintained of the vessel's swordfishing effort, catch, and disposition on forms available from the Science and Research Director. Such forms must be submitted to the Science and Research Director postmarked not later than the 3rd day after sale of the swordfish off-loaded from a trip. If no fishing occurred during a month, a report so stating must be submitted in accordance with instructions provided with the forms.

(2) An owner or operator of a vessel for which a permit has been issued under § 630.4(b) must submit copies of tally sheets for all swordfish off-loaded and for other species off-loaded with the swordfish, including, but not limited to, shark, yellowfin tuna, bigeye tuna, and albacore. Each tally sheet must show the dealer to whom swordfish and other species were transferred, the date transferred, and the carcass weight of each swordfish transferred and of each of the other species for which individual carcass weights are normally recorded, including, but not limited to, shark, yellowfin tuna, bigeye tuna, and albacore. For species not individually weighed, tally sheets must record total

weights by market category. Copies of tally sheets must be submitted with the logbook forms required under paragraph (a)(1) of this section.

(b) *Dealer reports.* (1) A dealer who has been issued a permit under § 630.4(c) must submit a report to the Science and Research Director twice each month. A report form is available from the Science and Research Director. The following information must be included in each report:

(i) Name, address, and permit number of the dealer;

(ii) Names and official numbers of fishing vessels from which swordfish were received;

(iii) Dates of receipt of swordfish; and

(iv) Where the swordfish were off-loaded from fishing vessels, listed by each port and county,

(A) Total weight (pounds) by market category for swordfish, and for other species received with the swordfish, including, but not limited to, shark, yellowfin tuna, bigeye tuna, albacore; and

(B) Price per pound or total value paid by market category for swordfish and other species, to the extent that such price information is known at the time of reporting.

(2) A report of swordfish and other applicable species received by a dealer on the 1st through 15th days of each month must be submitted to the Science and Research Director postmarked not later than the 20th day of that month. A report of swordfish and other applicable species received by a dealer on the 16th through the last day of each month must be submitted to the Science and Research Director postmarked not later than the 5th day of the following month. If no swordfish were received during a reporting period, a report so stating must be submitted postmarked as specified for that respective reporting period.

(3) The reporting requirement of paragraph (b)(1)(i) of this section may be satisfied by providing a copy of each appropriate weigh-out sheet and/or sales record, provided such weigh-out sheet and/or sales record, by itself or combined with the form available from the Science and Research Director, includes all of the required information.

(4) For the purposes of paragraph (b) of this section, for a swordfish off-loaded from a fishing vessel in an Atlantic coastal state from Maine through Virginia, Science and Research Director means the Science and Research Director, Northeast Fisheries Science Center, NMFS, Woods Hole, MA 02543, telephone 617–548–5123, or a designee. For a swordfish off-loaded from a fishing vessel in an Atlantic coastal state from Maine through Virginia, in lieu of providing a required report to the Science and Director by mail, as specified in paragraph (b)(2) of this section, a dealer may provide a report to a state or Federal fishery port agent designated by the Science and Research Director. Reports so provided must be delivered to such port agent not later than the prescribed time for submitting each such report.

6. Section 630.7 is revised to read as follows:

§ 630.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for, possess, retain, or land swordfish without a valid permit aboard a vessel when such permit is required under § 630.4(a)(1).

(b) Purchase, sell, barter, or trade or attempt to purchase, sell, barter, or trade a swordfish taken by a vessel that does not have a valid permit when such permit is required under § 630.4(a)(1).

(c) Sell, barter, or trade or attempt to sell, barter, or trade a swordfish to a dealer who does not have an annual dealer permit, as specified in § 630.4(a)(2).

(d) As a dealer, receive swordfish without an annual dealer permit, as specified in § 630.4(a)(2).

(e) Falsify information required on an application for a permit issued under § 630.4(b) or (c).

(f) Fail to display a permit, as required by § 630.4(h).

(g) Falsify or fail to maintain or submit information required to be maintained or submitted, as specified in § 630.5(a) or (b).

(h) Falsify or fail to affix and maintain vessel markings, as specified in § 630.6.

(i) Fail to embark an observer on a trip when selected, as specified in § 630.10(a).

(j) Falsify or fail to provide requested information regarding a vessel's trip, as specified in § 630.10(b).

(k) Assault, resist, oppose, impede, harass, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(l) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer conducting his/her duties aboard a vessel.

(m) Fail to provide an observer with the required food, accommodations, access, and assistance, as specified in § 630.10(c).

(n) Transfer a swordfish at sea from or to a fishing vessel, as specified in § 630.21(a).

(o) Sell, purchase, trade, or barter or attempt to sell, purchase, trade, or barter a swordfish harvested in the recreational fishery, as specified in § 630.21(f).

(p) Fish for swordfish with a drift gillnet that is 1.5 miles (2.42 kilometers) or more in length or possess a swordfish aboard a vessel possessing such drift gillnet, as specified in § 630.22.

(q) Land a swordfish that is smaller than the minimum size specified in § 630.23(a), except for the trip allowance for undersized swordfish, as specified in § 630.23(b).

(r) Possess or land a swordfish in other than whole or dressed form, as specified in § 630.23(c).

(s) During a closure of the drift gillnet fishery under § 630.25(a)(1), aboard a vessel using or having aboard a drift gillnet, fish for swordfish, or possess or land swordfish in excess of the bycatch limit, as specified in § 630.25(b)(1).

(t) During a closure of the harpoon and longline fisheries under § 630.25(a)(1), aboard a vessel using or having aboard harpoon or longline gear, fish for swordfish, or possess or land swordfish in excess of the bycatch limit, as specified in § 630.25(b)(2).

(u) Aboard a vessel using or having aboard gear other than drift gillnet, harpoon, or longline, fish for swordfish, or possess or land swordfish in excess of the bycatch limit, as specified in § 630.25(c).

(v) During a closure of the bycatch fishery under § 630.25(a)(2), fish for, possess, or land swordfish, as specified in § 630.25(d).

(w) Interfere with, obstruct, delay, or prevent by any means, a lawful investigation or search in the process of enforcing this part.

(x) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a swordfish.

7. A new § 630.10 is added to read as follows:

§ 630.10 At-sea observer coverage.

(a) If a vessel's trip is selected by the Science and Research Director for observer coverage, the owner or operator of such vessel must accommodate an NMFS-approved observer.

(b) When notified in writing by the Science and Research Director that his vessel has been selected to carry a NMFS-approved observer, an owner or operator of a vessel for which a permit has been issued under § 630.4(b) must advise the Science and Research

Director in writing not less than 10 days in advance of each trip of the following:

(1) Departure information (port, dock, date, and time); and

(2) Expected landing information (port, dock, and date).

(c) An owner or operator of a vessel on which an NMFS-approved observer is embarked must—

(1) Provide, at no cost to the observer or the United States government, accommodations and food that are equivalent to those provided to the crew;

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties;

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position;

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish; and

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish.

8. Subpart B is revised to reach as follows:

Subpart B—Management Measures

Sec.

§ 630.20 Fishing year.

The fishing year is January 1 through December 31.

§ 630.21 Restrictions on transfer, off-loading, and sale.

(a) A swordfish harvested from the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude may not be transferred at sea, regardless of where the transfer takes place; and in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude a swordfish may not be transferred at sea regardless of where the swordfish was harvested.

(b) A swordfish harvested from or possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude may be sold, traded, or bartered or attempted to be sold, traded, or bartered only by an owner or operator of a vessel that has been issued a permit under § 630.4(b), except that a swordfish that is off-loaded in Puerto Rico or the U.S. Virgin Islands from a non-permitted vessel that fished shoreward of the outer boundary of the EEZ around Puerto Rico and the U.S. Virgin Islands with only handline gear aboard may be sold, traded, or bartered.

(c) A swordfish harvested from or possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude may be purchased, traded, or bartered or attempted to be purchased, traded, or bartered or attempted to be purchased, traded or bartered only by a dealer permitted pursuant to § 630.4(c).

(d) A swordfish harvested from or possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude in the recreational fishery may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered.

§ 630.22 Gear restrictions.

A drift gillnet with a total length of 1.5 miles (2.42 kilometers) or more may not be used to fish for swordfish from the North Atlantic swordfish stock. A vessel using or having aboard a drift gillnet with a total length of 1.5 miles (2.42 kilometers) or more may not possess a swordfish.

§ 630.23 Harvest limitations.

(a) *Minimum size.* Except as specified in paragraph (b) of this section, the minimum allowable size for a swordfish landed from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state is 31 inches (78.7 cm) carcass length, measured along the body contour (i.e., a curved measurement) from the cleithrum to the anterior portion of the caudal keel (CK measurement) or, if swordfish are weighed when off-loaded, 41 pounds (18.6 kg) dressed weight. The cleithrum is the semi-circular bony structure that forms the posterior edge of the gill opening. Measurement must be made at the point on the cleithrum that provides the shortest possible CK measurement (Figure 1).

(b) *Trip allowance for undersized fish.* Swordfish smaller than the minimum size limit specified in paragraph (a) of this section may be landed in any trip from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state in an amount not exceeding 15 percent of the total number of swordfish landed in any trip. If the number representing 15 percent of the total number of swordfish landed contains a fraction of 0.5 or greater, then that fraction will be rounded to the nearest larger whole number; fractions less that 0.5 will be rounded to the nearest smaller whole number (e.g., if the 15 percent equals 4.5 fish, then this will be rounded to 5 fish; 4.4 fish will be rounded to 4 fish).

(c) *Carcass condition.* A swordfish possessed in the North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, north of 5° N. latitude must be in whole or dressed form, and a swordfish landed from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state must be maintained in whole or dressed form through off-loading, except such swordfish as are damaged by shark bites. A shark-bit swordfish for which the remainder of the carcass is less than the minimum size limit specified in paragraph (a) of this section will be counted against the 15 percent trip allowance for undersized swordfish specified in paragraph (b) of this section.

§ 630.24 Quotas.

(a) *Applicability.* A swordfish harvested from the North Atlantic swordfish stock by a vessel of the United States in other than the recreational fishery is counted against the directed-fishery gear quota or the bycatch quota. A swordfish harvested by drift gillnet, harpoon, or longline and landed before the effective date of a closure for that gear, done pursuant to § 630.25(a)(1), is counted against the applicable directed-fishery gear quota. After a gear closure, a swordfish landed by a vessel using or possessing gear for which a bycatch is allowed under § 630.25(b) is counted against the bycatch allocation specified in paragraph (c) of this section. A swordfish harvested by a vessel using or possessing gear other than drift gillnet, harpoon, or longline is counted against the bycatch quota specified in paragraph (c) of this section at all times.

(b) *Directed-fishery quota.* (1) The annual quota for the directed fishery for swordfish is 6.0 million pounds (2.72 million kg), dressed weight, divided into two semi-annual quotas as follows:

(i) For the semi-annual period January 1 through June 30—

(A) 40,785 pounds (18,500 kg), dressed weight, that may be harvested by drift gillnet; and

(B) 2,959,215 pounds (1,342,276 kg), dressed weight, that may be harvested by harpoon and longline.

(ii) For the semi-annual period July 1 through December—

(A) 40,785 pounds (18,500 kg), dressed weight, that may be harvested by drift gillnet; and

(B) 2,959,215 pounds (1,342,276 kg), dressed weight, that may be harvested by harpoon and longline.

(2) A swordfish that is possessed aboard, or landed in an Atlantic, Gulf of Mexico or Caribbean coastal state from, a vessel using, or having aboard, or which used or had aboard a drift gillnet during its most recent fishing trip, will be considered to have been harvested by a drift gillnet.

(c) *Bycatch quota.* The annual bycatch quota for swordfish is .9 million pounds (.41 million kg), dressed weight.

(d) *Adjustments to annual quotas.* (1) The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), will re-evaluate the annual total allowable catch and annual directed-fishery and bycatch quotas each year. For the purpose of this evaluation, the Assistant Administrator will consider the best available scientific information regarding the following factors:

(i) Swordfish stock abundance assessments;

(ii) Swordfish stock age and size composition;

(iii) Catch and effort in the swordfish fishery; and

(iv) Consistency with ICCAT recommendations.

(2) The Assistant Administrator may, at his discretion, convene a panel of scientists with expertise in swordfish stock assessment for the purpose of providing recommendations for adjustments to annual quotas.

(3) The Assistant Administrator will prepare a report of his evaluations, and, if necessary and appropriate, a regulatory impact review and an environmental assessment.

(4) Any adjustments to the annual directed-fishery quota will be apportioned equally between the January 1 through June 30 and July 1 through December 31 semi-annual periods.

(5) The Assistant Administrator will announce any adjustments to the annual quotas by publication of a proposed rule in the **Federal Register**, providing for a 45-day comment period. The report of evaluations and any regulatory impact review and environmental assessment will be made available to the public. The Assistant Administrator will take into consideration all information received during this comment period and will publish a final rule in the **Federal Register**.

(e) *Adjustments to semi-annual directed-fishery quotas.* The Assistant Administrator may adjust the July 1 through December 31 semi-annual directed-fishery quota and gear quotas to reflect actual catches during the January through June 30 semi-annual period, provided that the annual directed-fishery and gear quotas are not exceeded.

(f) *Inseason adjustments to the bycatch quota.* If the Assistant Administrator determines that the annual bycatch quota will not be taken before the end of the fishing year, the excess quota may be allocated to the directed-fishery quotas pursuant to the requirements and procedures in paragraphs (g) and (h) of this section.

(g) *Adjustments to gear quotas.* If the Assistant Administrator determines that the annual directed-fishery or bycatch quotas must be adjusted pursuant to paragraphs (d) and (f) of this section, the annual or semi-annual gear quotas will be adjusted so that the new gear quotas represent the same proportion (percentage) of the adjusted quota as they did of the quota before adjustment.

(h) *Notice of Adjustments.* (1) The Assistant Administrator will announce any adjustments in management measures made pursuant to subparagraphs (e), (f), and (g) of this section by publication of a notice of proposed management adjustments for public review and comment in the **Federal Register** unless the Assistant Administrator finds for good cause that such notice and public review are impracticable, unnecessary, or contrary to the public interest. During the public comment period, the aggregate data upon which the proposed adjustments are based will be available for public inspection at the Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service (NMFS), 1335 East-West Highway, Silver Spring, MD 20910 during business hours. The Assistant Administrator will take into consideration all information received during the comment period, and will publish a notice of final adjustments in the **Federal Register**.

(2) If the Assistant Administrator determines, for good cause, that a notice described in § 630.24(h)(1) must be issued without affording a prior opportunity for public comment, public comments on the notice shall be received by the Assistant Administrator for a period of 15 days after the effective date of the notice. During any such 15-day period, the aggregate data upon which the notice was based will be available for public inspection in the Office of Fisheries Conservation and Management during business hours.

(3) Any notice issued under this section will not be effective until 30 days after publication in the **Federal Register** unless the Assistant Administrator finds and publishes with the notice good cause for an earlier effective date.

(4) Notices issued under this section will remain in effect until the expiration date stated in the published notice or until rescinded, modified, or superseded.

§ 630.25 Closures and bycatch limits.

(a) *Notice of closure.* (1) When a directed-fishery annual, semi-annual or gear quota specified in § 630.24(b)(1) is reached, or is projected to be reached, the Assistant Administrator will publish a notice in the **Federal Register** to close the entire directed fishery for fish from the North Atlantic swordfish stock, the drift gillnet fishery, or the harpoon and longline fisheries, as appropriate. The effective date of such notice will be at least 5 days after the date such notice is filed with the Office of the Federal Register. The closure will remain in effect until an additional directed-fishery or gear quota becomes available.

(2) When the bycatch quota specified in § 630.24(c) is reached, or is projected to be reached, the Assistant Administrator will publish a notice in the **Federal Register** to prohibit further possession or retention of Atlantic swordfish by vessels of the United States. The effective date of such notice will be at least 5 days after the date such notice is filed with the Office of the Federal Register. The closure will remain in effect until a new annual bycatch quota becomes available.

(b) *Bycatch limits during a directed-fishery closure.* (1) During a closure of the drift gillnet fishery, aboard a vessel using or having aboard a drift gillnet—

(i) A person may not fish for swordfish from the North Atlantic swordfish stock; and

(ii) No more than two swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5 °N. latitude, or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

(2) During a closure of the harpoon and longline fisheries,

(i) Aboard a vessel using or having aboard a longline and not having aboard harpoon gear—

(A) A person may not fish for swordfish from the North Atlantic swordfish stock; and

(B) No more than two swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5 °N. latitude, or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state; and

(ii) Aboard a vessel using or having aboard harpoon gear—

(A) A person may not fish for swordfish from the North Atlantic swordfish stock; and

(B) No swordfish may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5 °N. latitude, or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

(c) *Bycatch limits in the non-directed fishery.* Aboard a vessel using or having aboard gear other than drift gillnet, harpoon, or longline, other than a vessel in the recreational fishery—

(1) A person may not fish for swordfish from the North Atlantic swordfish stock; and

(2) No more than two swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude, or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

(d) *Limits during a bycatch closure.* During a closure of the bycatch fishery under paragraph (a)(2) of this section, the provisions of paragraphs (b) and (c) of this section notwithstanding, aboard a fishing vessel, other than a vessel in the recreational fishery—

(1) A person may not fish for swordfish from the North Atlantic swordfish stock; and

(2) No swordfish may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5 °N. latitude, or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

§ 630.26 Specifically authorized activities.

The Assistant Administrator may authorize for the acquisition of information and data, activities that are otherwise prohibited by these regulations.

BILLING CODE 3510-22-M

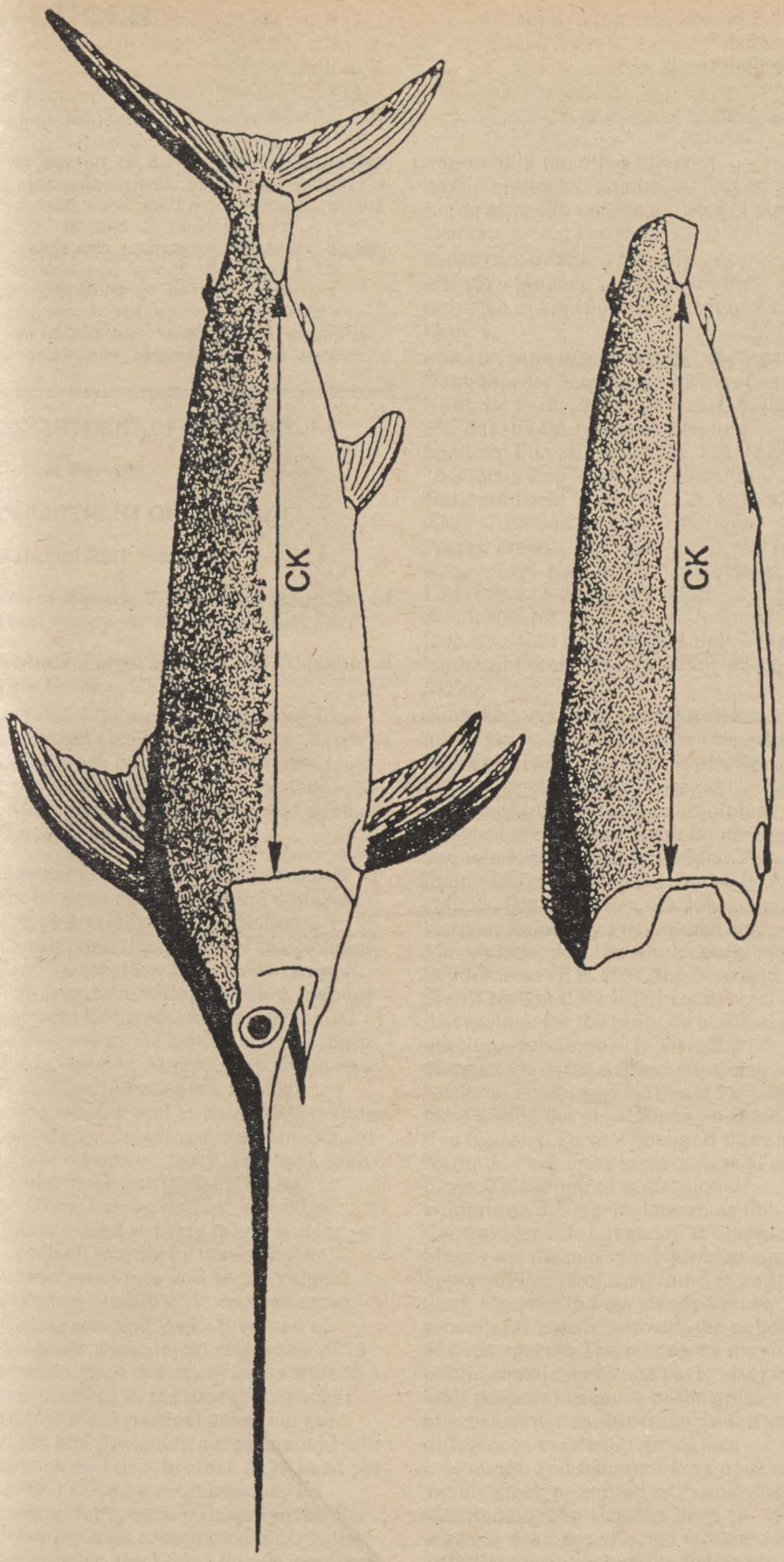

Figure 1. Cleithrum to keel (CK) measurement of swordfish.

BILLING CODE 3510-22-C

9. A new subpart C is added to read as follows:

Subpart C—Restrictions on Swordfish Imports

§ 630.40 Applicability.

The policies and procedures contained in 50 CFR 285.80 through 285.86, which implement the provisions of section 6(c) of the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.*, with respect to import controls and which specify procedures for the establishment of restrictions on imports of tuna, apply to swordfish from the North Atlantic swordfish stock.

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BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 205
Wednesday, October 23, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF INTERIOR

National Park Service

Sierra Nevada Wilderness; Adoption of Final Policy for Maximum Party Size

AGENCY: Forest Service, USDA; National Park Service, USDI.

ACTION: Adoption of final policy for maximum size of party, number of pack/riding stock per party, and a maximum party size per camp site in certain wildernesses in the central and southern Sierra Nevada.

SUMMARY: Five units of the National Forest System (Inyo, Sequoia, Sierra, Toiyabe, and Stanislaus National Forests) and three units of the National Park System (Sequoia, Kings Canyon, and Yosemite National Parks), manage adjacent Congressionally designated wilderness in the central and southern Sierra Nevada. Forest Supervisors and Park Superintendents have the responsibility and authority to regulate public use, including the establishment of restrictions on party size, pack and saddle stock use (horses, mules, donkeys, burros, llamas, and other animals used to carry riders and/or supplies), as may be necessary to protect resources and social values including quality visitor experiences. The Forests and Parks involved so designate a maximum group size of 15 persons, limit the use of camp sites to a maximum of 15 persons (backpacker and/or stock parties) per camp per night, and designate a maximum number of pack and saddle stock of 25 head per party. Limited exceptions may be granted for special circumstances. For excepted trips crossing administrative boundaries, the Forest Supervisor/Park Superintendent receiving the request will coordinate with and receive the approval of the other affected administrator(s). The policy text is found after the section entitled "Public Comments and Responses".

EFFECTIVE DATES: This policy is effective January 1, 1992, with the issuance of appropriate Forest or Park Orders.

FOR FURTHER INFORMATION CONTACT: Doug Morris, Sequoia and Kings Canyon National Parks, Three Rivers, CA, (209–565–3341); Marily Reese, Sequoia National Forest, Porterville, CA, (209–784–1500); Ron Mackie, Yosemite National Park, Yosemite, CA, (209–372–0285); Tom Baxter, Sierra National Forest, Fresno, CA, (209–487–5145); John Ruopp, Inyo National Forest, Bishop, CA, (619–873–2438); Art Smith, Stanislaus National Forest, Sonora, CA, (209–532–3671); and Nick Zufelt, Toiyabe National Forest, Sparks, NV, (702–355–5319).

SUPPLEMENTARY INFORMATION: For many years, Federal land managers of the central and southern Sierra Nevada have strived for consistency in administration of sixteen adjoining wildernesses (Dome Land, South Sierra, Sequoia-Kings Canyon, Golden Trout, Jennie Lakes, Monarch, John Muir, Ansel Adams, Dinkey Lakes, Kaiser, Yosemite, Hoover, Boundary Peak, Emigrant, Mokelumne, and Carson-Iceberg Wildernesses). In 1974, the Inyo and Sierra National Forests began discussions for the purpose of managing adjoining wilderness in a similar manner. Over time, other adjoining National Forest and National Park units have joined the discussions until today five National Forest units and three National Park units meet on a regular basis. This group of professional wilderness managers, known as the Central Sierra Interagency Wilderness Managers, discuss many problems and opportunities of mutual interest and work together to provide visitor use procedures consistent with the policies of each agency. The managers sought public comments on the party size/stock limit proposal because of the great interest shown in this issue. In the past, differences existed in group size limitations and the number of pack and saddle stock permitted with any group. Maximum group size has been 25 persons in all the affected wildernesses with the exceptions of the Emigrant Wilderness where the maximum party size is 15, 60% of the 25 trailheads within Sequoia-Kings Canyon Wilderness where the maximum party size is 15, certain trail-less areas of Yosemite Wilderness where the maximum group size is 8 people, and within that portion of the Hoover Wilderness administered by the Toiyabe National Forest where the maximum group size is 15 people in most locations and 8 in the Sawtooth Ridge zone. There has been no limit on the number of stock within the Dome Land, Jennie Lakes, Monarch, John Muir, Ansel Adams, Dinkey Lakes, Kaiser, Mokelumne, Carson-Iceberg, Hoover (Inyo National Forest portion), and Boundary Peak Wildernesses; a maximum of 20 head within the Sequoia-Kings Canyon and Emigrant Wildernesses, and a maximum of 25 head within the Yosemite, Golden Trout, South Sierra and the Toiyabe National Forest portion of the Hoover Wildernesses. Problems have occurred as parties cross administrative boundaries between the units or wildernesses and encounter different limits. With this action, the involved agencies and units now standardize the maximum group size, maximum number of pack and saddle stock permitted with each group, and the number of people (including both backpackers and stock parties) per camp site, within the identified wildernesses.

A notice of the proposed policy was published in the **Federal Register** on April 22, 1991 (56 FR 16293). Comments were invited for the period ending June 6, 1991.

Public Comments and Responses

227 letters were received. 204 came from individuals and 23 from organizations. Of these, approximately 25% of the letters were generated by one hiking organization. Major comments and responses are summarized below.

Comment: Respondents felt that the standard limits would make it difficult to protect other areas which might require additional restrictions to protect social or resource values.

Response: The policy allows individual wilderness administrators to reduce the maximum group size and/or head of stock per party in specific areas, where resource and/or social conditions require this action. Wilderness management plans contain measures to reduce overall impacts to the wilderness resource. Normally, identification of specific resource impacts and measures

to mitigate them will be accomplished through the wilderness management planning process.

Comment: Respondents felt that the proposed policy would unfairly impact organized groups and organizations, citing the economy of large parties which make trips more affordable. By reducing party size, some groups or individuals would no longer be afforded the opportunity to visit the backcountry according to some respondents.

Response: As was noted in the draft notice, an analysis of wilderness permits showed that almost 99% of all parties numbered 15 persons or less. Only about 1% of existing users would be affected. While it is true that costs may increase per person, the agencies do not feel that any group or individual will be denied access to the wilderness. It is true that reorganization and new ways of planning for such trips may be necessary for some organizations. Responses received from organized groups were mixed. Some felt that smaller groups size would not affect them, while others felt it would have impacts. The policy provides that the Forest Supervisor or Park Superintendent can make limited exceptions to the policy for special circumstances as long as other affected Supervisors or Superintendents agree.

Comment: Respondents asked why it was necessary to implement further restrictions since such a small number of users are in groups of more than 15.

Response: Information indicates that for social reasons, a majority of users object to large parties even when such parties are not common. The agencies feel that the wilderness experience for the majority of users can be improved by limiting party size to 15.

Comment: Respondents felt that the agencies did not take public opinion into consideration when proposing the new stock limitations, citing the various surveys and analysis mentioned in the draft notice which indicated a strong preference for fewer numbers of stock.

Response: The draft proposal and this decision is a balance between public opinion and professional judgement.

Public comment, while important to managers, is not a voting process, but rather a statement of public sentiment. It is one of a number of factors which are used by managers. In this case the managers have balanced the needs and desires of a variety of users, and have used a variety of informational sources. A majority of respondents agreed with the proposed party size of 15. Respondents are correct when they cite figures showing the majority of traditional nonstock users desire less than 25 head of stock per party. As stated in the draft notice, the managers feel that 25 head of stock is the minimum needed to service an equestrian party of 15 and would include both riding and pack stock. Some respondents disagreed, citing 30–40 head of stock as the minimum number required for a party of 15.

Comment: Respondents questioned the adequacy of the data which the managers cited in proposing the party size and number of head of stock per party. Some correctly pointed out that the data was socially based while noting that resource data should also be used. Others felt that the surveys did not adequately sample potential users of the wilderness, or felt that the judgement of the managers was subjective and biased.

Response: The proposals for the maximum party size and maximum number of head of stock per party are based on social needs, therefore the data used is appropriate. There may also be resource impacts in certain areas which require further actions to correct. As noted above, resource damage and proposed mitigation will be addressed in the appropriate wilderness management plan. Allegations that the data did not reflect the views of potential users are not accurate. While it is true that the research project cited surveyed wilderness users, viewpoints of potential users also were invited through media news releases. In addition, the publication of the draft notice in the **Federal Register** and media releases again invited comments from everyone. A copy of the **Federal Register** notice was sent to all known interested parties and groups on the Interagency mailing list. Managers have the responsibility of balancing the viewpoints of a wide variety of users, while protecting wilderness resources including social values. Their judgements are based on many years of experience with a variety of users and resource situations. There is no bias.

Comment: Respondents felt that the proposed maximum number of stock per party was based on economic considerations which favor the commercial packer over resource considerations.

Response: The decision is being made to lessen social impacts. As noted elsewhere, resource considerations will be analyzed in wilderness management plans. Comments on both sides of the economic issue were received. Some felt that the decision was made to satisfy commercial interest, while others felt that the proposed party size and number stock would not be economical to either the commercial packer or client. The managers feel that the selected number of stock is the minimum number that is needed to service a party of 15, which includes the packer staff. While the new policy affects both commercial and non-commercial stock users, most of the comment was directed at the commercial user. Outfitter-guides services are a long established use in National Forest and National Park wildernesses. Such use predates the designation of the wilderness. These services are authorized by permits issued by each administrative unit and provide a service to that segment of the public which prefers to or must travel with stock.

Comment: Respondents felt that the decision and the process used to reach the decision is in violation of law or agency policy. Most often cited were legislative mandates of the agencies, the National Environmental Policy Act (NEPA), or Forests Land and Resource Management Plans.

Response: Implementation of these actions is the responsibility of the respective Forest Supervisors and Park Superintendents, are within the legislative and regulatory mandates of both agencies, and are formalized in various written policy of both agencies. They are administrative actions. As such, they are exempt from the analysis process as prescribed in NEPA. The agencies have invited public involvement in the process, both in the initial stages of draft policy formulation and in publication of the draft policy in the **Federal Register.** Public notification and invitation for comments was also accomplished through the release of news articles throughout California and Eastern Nevada. This action is primarily to reduce social impacts for the majority of wilderness users. Impacts to resources caused by use of stock and humans will be analyzed in the appropriate wilderness management plans as they are formulated or revised by the agencies. Public input will be invited and welcomed at the appropriate time. There are no conflicts with Forest Standards and Guidelines. The changes in stock numbers for the Emigrant Wilderness will be implemented with the appropriate NEPA documentation and amendment.

Comment: Respondents noted that the current maximum stock group size for the Emigrant Wilderness was established by an environmental assessment. To change this number, an environmental document must be prepared.

Response: This is correct. The maximum number of stock per party for the Emigrant Wilderness was established by the Environmenta'

Assessment prepared for the Emigrant Wilderness Management Plan in 1979. This decision was reflected in the maximum party size requirement in the management plan. Prior to changing this limit in response to the Central Sierra Interagency Wilderness Managers proposal, the Stanislaus National Forest will prepare the necessary National Environmental Policy Act documentation and issue a new decision to modify that portion of the Emigrant Wilderness Plan.

Comment: Respondents expressed a fear that this policy was the beginning of an effort to eliminate stock use in the wilderness.

Response: The agencies have no intention of eliminating stock from wilderness. Such use represents a historic, legitimate use. However, mitigation may be necessary when resource or social values are impacted by whatever cause. Agencies will prepare, revise, or amend management plans or take other action as necessary to mitigate impacts.

Comment: Respondents commented on the "phase-in" provisions of the policy.

Response: The reasons for this phase-in were stated in the draft policy as published in the **Federal Register**. This provision remains in the final policy.

Comment: Respondents stated that they were opposed to a policy that would increase the number of head of stock/party in the Sequoia and Kings Canyon and the Emigrant Wildernesses, which is 25% of the area involved in this policy.

Response: Number of stock per party will be regulated for the first time on 10 of the 16 wildernesses, which include almost 1.3 million acres or 40% of the areas affected by this policy. With no limits in the past, stock parties consisting of 40 or more head occurred. 25 head of stock represents a large decrease for this area. Maximum number of stock per party would be increased on two units * * * the Sequoia/Kings Canyon Wilderness and the Emigrant Wilderness. This will not necessarily result in an increase in the total number of stock per season, particularly in Sequoia/Kings Canyon Wilderness where total number will be based on identified levels of use for each forage area. Sequoia/Kings Canyon National Park managers are revising the existing stock use and Backcountry Management Plans. The new policy will allow more consistent administration of backcountry use, enhance the social experience for large numbers of users, and at the same time, allow stock parties the continued use of wilderness in reasonable and appropriate numbers.

Comment: One respondent noted that it is implied but not explicitly stated that the maximum number in a party and the maximum number at a campsite also applies to hikers and backpackers.

Response: The maximum number in a party and the maximum number at a campsite applies to both backpackers and stock users. This has been clarified in the final policy.

Comment: Respondents noted the provisions for exceptions as stated in the draft **Federal Register** notice. Some felt that there should be no allowance for exceptions, some felt provisions for exceptions needed to be included, and still others recommended that the managers establish criteria for granting exceptions.

Response: The agencies feel that there must be a process for granting exceptions. The policy provides for this, but clearly indicates that exceptions will be made only for special circumstances and will not be granted to continue past, routine practices. For excepted trips crossing administrative boundaries, the Forest Supervisor/Park Superintendent receiving the request will coordinate with and receive the approval of the other affected administrator(s). There are no established criteria for special circumstances, nor is it desirable to establish criteria because of the myriad of possibilities. Each Park Superintendent and Forest Supervisor will consider each request and make a decision after coordinating with other affected administrators. As noted in the policy, thirty day advance notification will be required for consideration of exceptions and may include route and itinerary approval.

Comment: Respondents suggested a limit other than 25 head of stock. Included were suggestions for less than 25, more than 25, a ratio of stock/person, and a maximum party size to include both people and stock, in combination.

Response: In setting the maximum head of stock per party at 25, the agencies recognize that this is the minimum number required to service a party of 15 people. To reduce the number of stock below this level would effectively reduce party size for stock users to less than 15. The agencies feel this is not appropriate. If further adjustments are necessary to reduce resource impacts in specific areas, wilderness management plans will provide this direction.

Final Policy

The Forests and Parks involved designate a maximum group size of 15 persons, limit the use of camp sites to a maximum of 15 persons (backpacker and/or stock parties) per camp per night, and designate a maximum number of pack and saddle stock of 25 head per party. Exceptions may be granted for public purposes with special circumstances as noted below. A one-year phase-in, beginning with the implementation date of this policy, will be allowed for the purpose of educating users, and to allow organized groups and commercial outfitters the opportunity to adjust plans, procedures, and client bookings and acquire alternative light weight-gear if necessary. During this phase-in period, field managers will have the authority to waive the maximum party size and stock limits up to pre-existing levels. Waivers will be made in advance whenever possible to accelerate the communication and education process. At the conclusion of the phase-in, authority to exceed the limits will be reserved to the respective Forest Supervisor or Park Superintendent and will be granted for public purposes with special circumstances only. Exceptions will not be granted for past, routine practices. For excepted trips crossing administrative boundaries, the Forest Supervisor/Park Superintendent receiving the request will coordinate with and receive the approval of the other affected administrator(s). Thirty day advance notification will be required for consideration of exceptions and may include route and itinerary approval. Field managers can continue to approve exceptions only for extra stock needed when grazing restrictions requires carrying feed. Areas which have had maximum group sizes less than those proposed (i.e. Yosemite trail-less areas and the Sawtooth Ridge Zone) will not be affected by the proposed change. Individual wilderness administrators will also retain the option to reduce the maximum group size and/or head of stock per party in specific areas where resource conditions require this action. Normally, this will be accomplished through wilderness management plans.

Forest Supervisors will implement the requirements through Forest Orders as authorized by title 36 Code of Federal Regulations, subpart B, § 261.50 (a) and (b). Park Superintendents will implement the requirements through Superintendent Orders as authorized by 36 Code of Federal Regulations.

Dated: September 26, 1991.
J. Thomas Ritter,
Superintendent, Sequoia-Kings Canyon National Parks.

Dated: September 23, 1991.
Philip H. Bayles,
Acting Forest Supervisor, Sequoia National Forest.

Dated: October 2, 1991.
Michael V. Finley,
Superintendent, Yosemite National Park.

Dated: September 24, 1991.
James L. Boynton,
Forest Supervisor, Sierra National Forest.

Dated: September 24, 1991.
Dennis W. Martin,
Forest Supervisor, Inyo National Forest.

Dated: September 25, 1991.
Janet L. Wold,
Forest Supervisor, Stanislaus National Forest.

Dated: September 26, 1991.
R.M. "Jim" Nelson,
Forest Supervisor, Toiyabe National Forest.

[FR Doc. 91-24970 Filed 10-22-91; 8:45 am]
BILLING CODE 3410-11-M

Forest Service

Roundy Timber Sale, Dixie National Forest, Garfield County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on a proposal to harvest timber in the Roundy area of the Escalante Ranger District, Dixie National Forest. The area is approximately 25 miles north of Escalante, Utah.

DATES: The proposal was originally scoped as part of the Jacobs Valley, Roundy, and Boulder Swale Timber Sales during the fall of 1988. Additional scoping was done through newspaper advertisements in May, 1989. Scoping correspondents were updated on project status in September, 1991. All comments received from previous scoping efforts will be incorporated into the analysis process. Additional written comments to be considered in the Draft Environmental Impact Statement (DEIS) should be submitted within 30 days following the publication of this announcement in the **Federal Register.**

ADDRESSES: Submit written comments to: District Ranger, Escalante Ranger District, P.O. Box 246, Escalante, Utah 84726.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to David A. Barondeau, Forester, 801-826-4221.

SUPPLEMENTARY INFORMATION: The proposed project covers an analysis area of 4,737 acres of National Forest System Lands. Timber stands in the project area cover 3,625 acres. Unevenaged stands of Engelmann spruce and subalpine fir is the dominant timber type. Even-aged stands of aspen are present. Aspen remnants are also scattered throughout the Engelmann spruce/subalpine fir stands.

The purpose of the proposed action is to improve growth and yield and to decrease the potential for a spruce beetle outbreak. The proposed action is to harvest diseased or insect infected trees, high risk trees, and to obtain the desired stocking levels utilizing a combination of individual and group selection and improvement harvest methods.

Post sale precommercial thinning and planting will be done to move the stands toward the desired future condition.

Preliminary issues that have been identified through scoping to date include project effects on:

1. Open road density, impact on wildlife habitat, harvest effects on old growth and old growth-dependent species, harvest effects on hiding, thermal, and fawning cover;
2. Growth and regulation of Engelmann spruce, management of spruce beetle and *Fomes tomentosa*, and retention or loss of the aspen component;
3. Visual quality along the Aquarius/Teasdale Road (FH154) travel corridor, potential conflicts between logging and recreational traffic, effects on other recreational pursuits (hunting, hiking, fuelwood cutting);
4. Economic efficiency of spruce/fir harvest, effect on dependent communities and industries;
5. Location and layout of transportation system, use of existing roads in meadows v.s. relocation, types and number of road closures.

Tentative alternatives to the proposed action include: No Action (the project will not take place, but current management will continue—i.e. dispersed recreation, livestock grazing, fuelwood gathering, etc.); Maximization of short term benefit by using a combination of even-aged and unevenaged silvicultural systems; Low intensity timber management to emphasize enhancement of wildlife habitat, visual, and recreation values.

The EIS will tier to the Dixie National Forest Land and Resource Management Plan (DNF-LRMP) FEIS (1986) which has specified Forest Plan goals, objectives, desired future condition, management area direction, and standards and guidelines for this area. The project area is designated under the DNF-LRMP as 7A (Timber Management), 2B (Rural and Roaded Recreation Opportunities), and 6A (Livestock Grazing).

As lead agency, the Forest Service will analyze and document direct, indirect, and cumulative environmental effects of a range of alternatives. Each alternative will include mitigation measures and monitoring requirements.

Hugh C. Thompson, Forest Supervisor, Dixie National Forest, is the responsible official.

The entire analysis area lies within National Forest System lands. No federal or local permits, licenses or entitlements would be needed. There are no potential conflicts with the plans and policies of other jurisdictions.

The comment period on the Draft EIS will be 45 days from the date of the EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in the proposed action participate at this time. To be most helpful, comments on the DEIS should be as specific as possible and may discuss the adequacy of the statement or the merits of the alternatives discussed (see CEQ Regulations for implementing the procedural provisions of NEPA at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of the DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the FEIS. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334. 1338 (E.D. Wis. 1980). This is to ensure that substantive comments and objections are made available to the Forest Service at the time it can meaningfully consider them and respond to them in the FEIS.

The DEIS is expected to be available for review by November 12, 1991. The Record of Decision and FEIS is expected to be available by January 23, 1992.

Dated: October 10, 1991.

Hugh Thompson,

Dixie National Forest, P.O. Box 580, Cedar City, UT 84721-0580.

[FR Doc. 91-25463 Filed 10-22-91; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will be held from 1 p.m. until 5 p.m. on Friday, November 8, 1991, at the Midland Hotel, 172 W. Adams St., Chicago, Illinois. The purpose of this meeting is for the Committee to receive a briefing on unequal police protection for minorities.

Persons desiring additional information should contact Faye M. Lyon, Committee Chairperson at (815) 965-9595 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353-8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 17, 1991.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-25461 Filed 10-22-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Joint Meetings

In the matter of Census Advisory Committee (CAC) on the American Indian and Alaska Native Populations for the 1990 Census, the CAC on the Asian and Pacific Islander Populations for the 1990 Census, the CAC on the Black Population for the 1990 Census, and the CAC on The Hispanic Population for the 1990 Census; Public Meeting.

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of a joint meeting followed by separate and jointly held meetings (described below) of the CAC on the American Indian and Alaska Native Populations for the 1990 Census, the CAC on the Asian and Pacific Islander Populations for the 1990 Census, the CAC on the Black Population for the 1990 Census, and the CAC on the Hispanic Population for the 1990 Census. The joint meeting will convene on November 13-15, 1991, at the Bureau of the Census in the Conference Center, room 1066, Federal Building 3, Suitland, Maryland 20233.

Each of these Committees is composed of 12 members appointed by the Secretary of Commerce. They provide an organized and continuing channel of communication between the communities they represent and the Bureau of the Census on the problems and opportunities of the 1990 decennial census.

The Committees will draw on its past experience with the 1990 census process and procedures, results of evaluations and research studies, and the knowledge and insight of its members to provide advice and recommendations during the planning phase for the year 2000 census.

The agenda for the November 13 combined meeting that will begin at 1 p.m. and end at 5:30 p.m. is a Year 2000 Focus Group Meeting.

The agenda for the November 14 combined meeting that will begin at 8:30 a.m. and end at 12:30 p.m. is: (1) Opening remarks by the Deputy Director, Bureau of the Census; (2) 1990 decennial update; (3) key findings from the 1990 census; (4) results of advertising, promotion, and outreach; (5) presentation of plaques; and (6) remarks on the adjustment decision.

The agendas for the four committees in their separate and jointly held meetings that will begin at 2 p.m. and adjourn at 5 p.m. on November 14 are as follows:

The CAC on the American Indian and Alaska Native Populations for the 1990 Census: (1) Review of plenary session presentations; (2) review responses to recommendations; (3) results of debriefings from the Tribal and Alaska Native Village Liaison Program; (4) training module for American Indian and Alaska Native communities; (5) status report of American Indian and Alaska Native information center (6) report on plans for the research conference on the undercounted population; and (7) reports on conferences: Homeless conference, annual research conference, April 1991 technical advisory committee meeting, and the ethnographic seminars.

The CAC on the Asian and Pacific Islander Populations: (1) Review of plenary session presentations; (2) review responses to recommendations; (3) report on the ethnographic seminars; (4) reports on conferences: Annual research conference and April 1991 technical advisory committee meeting; (5) training module for Asian and Pacific Islander communities; (6) status report on the Asian and Pacific Islander information center; and (7) report on the plans for the research conference on the undercounted population.

The CAC on the Black Population for the 1990 Census: (1) Election of chair-elect; (2) Review of plenary session presentations; (3) review responses to recommendations; (4) report on the ethnographic seminars; (5) reports on conferences: Annual research conference, April 1991 technical advisory committee meeting, and the homeless conference; and (6) report on plans for the research conference on the undercounted population.

The CAC on the Hispanic Population for the 1990 Census: (1) Review of plenary session presentations; (2) review responses to recommendations; (3) report on the ethnographic seminars; (4) reports on conferences: Annual research conference and the April 1991 technical advisory committee meeting; (5) training module for the Hispanic community; and (6) report on plans for the research conference on the undercounted population.

The agenda for the November 15, 1991, combined meeting that will begin at 8:30 a.m. and end at 12:30 p.m. is: (1) Other 1990 evaluations, including field evaluations and behavioral research analysis summary; (2) plans for research conference on undercount; (3) research and development program for designing the year 2000 census, including principles of research and development for the year 2000 census design, external involvement in the year 2000 design—committees' role, and major research areas for the year 2000 design; and (4) census quality management.

The agenda for the four committees in their separate and jointly held meetings that will begin at 1:30 p.m. and adjourn at 5 p.m. on November 15 are as follows:

The CAC on the American Indian and Alaska Native Populations Committee for the 1990 Census: (1) Review of plenary session presentations; (2) major findings on American Indian and Alaska Native populations from the 1990 census; (3) subject reports on American Indian and Alaska Native populations; and (4) development and discussion of recommendations.

The CAC on the Asian and Pacific Islander Populations for the 1990 Census: (1) Review of plenary session presentations; (2) major findings on Asian and Pacific Islander populations from the 1990 census; (3) subject reports

on Asian Pacific Islander populations; and (4) development and discussion of recommendations.

The CAC on the Black Population for the 1990 Census: (1) Review of plenary sessions presentations; (2) major findings on the Black population from the 1990 census; (3) subject reports on the Black population; (4) training module for the Black community; and (5) development and discussion of recommendations.

The CAC on the Hispanic Population for the 1990 Census: (1) Review of plenary session presentations; (2) major findings on the Hispanic population from the 1990 census; (3) subject reports on the Hispanic population; and (4) development and discussion of recommendations.

All meetings are open to the public and a brief period is set aside on November 15 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least 3 days before the meeting.

Persons wishing additional information regarding these meetings or who wish to submit written statements may contact Ms. Diana Harley, Decennial Planning Division, Bureau of the Census, room 3546, Federal Building 3, Suitland, Maryland. Mailing address: Washington, DC 20233 telephone: (301) 763–4275.

Dated: October 17, 1991.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 91–25450 Filed 10–22–91; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[C–549–401]

Certain Textile Mill Products From Thailand; Amended Termination in Part of Suspended Countervailing Duty Investigation and Amended Administrative Review on Remand

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of amended termination in part of suspended countervailing duty investigation and amended administrative review on remand.

SUMMARY: As a result of a final court decision, the Department is amending its termination in part of the suspended investigation in this matter by terminating the suspended investigation with respect to all products but noncontinuous noncellulosic yarn. In addition, the Department is terminating the 1989 administrative review with respect to all products but noncontinuous noncellulosic yarn.

EFFECTIVE DATE: October 23, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Richard Weible, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377–3793.

BACKGROUND INFORMATION: On February 26, 1990, the Department of Commerce ("the Department") published in the **Federal Register** (55 FR 6669) its intent to terminate the suspended countervailing duty investigation on certain textile mill products from Thailand (50 FR 9862 (March 12, 1990)). On March 26, 1990, the American Yarn Spinners Association ("AYSA"), a trade association, objected to the Department's intent to terminate the suspended investigation and requested an administrative review for calendar year 1989. On June 15, 1990, AYSA withdrew its objection to termination and request for administrative review with respect to all non-yarn products, stating that its interest was in respect to yarn products only. AYSA also provided the Department with a list of member companies that produced yarn.

As a result, on November 23, 1990, the Department terminated the suspended investigation with regard to all non-yarn products covered by the suspended investigation (55 FR 48885). In addition, on January 17, 1991, the Department initiated an administrative review covering yarn products (effectively eight like products) for calendar year 1989 (56 FR 1800).

Subsequent to publication of the November 23, 1990 notice, counsel for the Royal Thai Government filed a lawsuit in the United States Court of International Trade ("CIT") challenging the Department's determination that AYSA had standing to oppose termination of the suspended investigation. On May 17, 1991, the CIT remanded the determination to the Department for reconsideration of AYSA's standing to oppose termination. On July 3, 1991, the Department issued remand results finding that AYSA had standing to oppose termination vis-a-vis only one like product covered by the suspended investigation, *i.e.*, noncontinuous noncellulosic yarn. The CIT affirmed that remand determination in its entirety on August 5, 1991. *The Royal Thai Government, et al.*, v. *United States*, Slip Op. 91–68 (August 5, 1991).

On October 4, 1991, because the time period for appealing the CIT's affirmation expired and no party appealed that decision, the Department's remand determination became final and unappealable. See *The Timken Co.* v. *United States*, 893 F.2d 337 (CAFC 1990).

Thus, consistent with its determination on remand, the Department hereby amends its termination of the suspended investigation in this matter by terminating the suspended investigation with respect to all products but noncontinuous noncellulosic yarn. In addition, the Department hereby terminates the 1989 administrative review with respect to all products but noncontinuous noncellulosic yarn. Due to this amended termination and administrative review, all subsequent proceedings in this matter will be entitled "Certain Noncontinuous Noncellulosic Yarn from Thailand."

Dated: October 16, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–25539 Filed 10–22–91; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: Greenville, South Carolina

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approxiamtely a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. Prospective offerors are advised that there is an incumbent MBDC operator now providing these services. This award is contingent upon the incumbent's satisfactory performance. The current operator is required to maintain a satisfactory level of performance during the first six months of the award period. Should the operator's performance not be acceptable, the incumbent's award may be terminated and a new award made on the basis of responses received to this solicitation. The cost of

performance for the first budget period (12 months) is estimated as $165,000 in Federal funds and a minimum of $29,118 in non-Federal (cost sharing) contributions from 03/1/92 to 02/28/93. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Greenville, South Carolina geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority businesses.

Applications will be evaluated initially be regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may change client fees for management and technical assistance (M&%TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A–129 "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmental Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V subtitle D). The statute requires contractors and grantees of Federal agencies to cetify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a pre-condition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF–LLL, the "Disclosure of Lobbying Activities" (if applicable) are required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for applications is November 20, 1991. Applications must be postmarked on or before November 20, 1991. Proposals will be reviewed by the Dallas Regional Office. The mailing address for submission of RFA responses is Dallas Regional Office, Minority Business Development Agency, 1100 Commerce Street, room 7B23, Dallas, Texas 75242.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. To order a Request for Application (RFA) and to receive additional information, contact: Carlton L. Eccles, Regional Director of the Atlanta Regional Office on (404) 730–3300 or U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1930, Atlanta, Georgia 30308. Note: A pre-application conference will be held at the above address on November 6, 1991 at 9 a.m.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: October 16, 1991.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 91–25464 Filed 10–22–91; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council (Council) and the Council's Administrative Committee will hold public meetings on October 29–31, 1991, at the Point Pleasant Resort, St. Thomas, U.S. Virgin Islands. Fishermen and other interested persons are invited to attend the meetings, which will be conducted in English. The public will be allowed to

submit oral or written statements regarding agenda items.

Council—The Council will begin its 74th regular public meeting on October 29 at 9 a.m., and recess at 5 p.m. The Council will reconvene the meeting on October 31 at 9 a.m., and adjourn at noon. Among other topics, the Council will discuss the Coral and Shallow-water Reef Fish Fishery Management Plans.

Administrative Committee—The Committee will begin its public meeting on October 29 at 2 p.m., to discuss matters pertaining to the Council's administrative operations, and adjourn at 5 p.m.

For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918–2577; telephone: (809) 766–5926.

Dated: October 17, 1991.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–25456 Filed 10–22–91; 8:45 am]

BILLING CODE 3510–22–M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council (Council) will hold a public meeting on October 30–31, 1991, at the Kings Grant Inn, Rt. 128 at Trask Lane, Danvers, MA; telephone: 508–774–6800. The Council will begin the meeting at 10 a.m. on October 30. The meeting will be reconvened on October 31 at 9 a.m.

The meeting will begin on October 30 with briefings by the Council Chairman, the Council Executive Director, the National Marine Fisheries Service Regional Director, and the Northeast Fisheries Science Center and Mid-Atlantic Council liaisons. Representatives from the U.S. Department of State, U.S. Coast Guard, U.S. Fish and Wildlife Service and the Atlantic States Marine Fisheries Commission also will brief the Council.

Briefings will be followed by the Groundfish Committee report, at approximately 11 a.m. The Committee Chair will provide an update on activities of the Groundfish Plan Development Team (PDT). Management alternatives for the recreational party and charter boat fishery, alternatives for PDT analysis, and northern shrimp management will then be discussed. The above discussions are related to Amendment #5 to the Northeast Multispecies Plan. The Groundfish Committee's report will be continued after the lunch break.

The Large Pelagics Committee will report on progress of the Secretarial Swordfish Plan and on the status of the pair trawl fishery. The Lobster Committee will then provide an update on the development of Amendment #5 to the Lobster Fishery Management Plan.

On Thursday, October 31, the meeting will begin with a report by the Habitat Committee Chairman on the Foul Area Disposal Site and on 1992 Committee priorities. The meeting will conclude with reports by the Herring and the Sea Scallop Committee Chairmen, who will review the progress of their respective PDTs.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

Dated: October 17, 1991.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–25457 Filed 10–22–91; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals: Issuance of Permit; NMFS, Northeast Fisheries Science Center (P77#46)

On February 20, 1991, notice was published in the **Federal Register** (56 FR 6840) that an application had been filed by the Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543–1097, for a permit to collect and import dead cetacean specimens killed incidentally to U.S. and foreign commercial fishing operations for scientific research.

Notice is hereby given that on October 17, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for import subject to certain conditions set forth therein. A permit for collection was determined to be unnecessary.

Issuance of this Permit is based on a finding that the proposed importation is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that this research satisfies the issuance criteria for scientific research permits. The importation is required to further a *bona fide* scientific purpose and does not involve unnecessary duplication of research. The animals are caught dead; thus, no lethal taking is authorized.

The Permit is available for review in the following offices:

By appointment: Office of Protected Resources, Permit Division, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, Maryland 20910 (301/427–2289); and Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930.

Dated: October 17, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–25500 Filed 10–22–91; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit; Dr. Thomas J. Ford (P481A)

On August 13, 1991, notice was published in the **Federal Register** (56 FR 38425) that an application had been filed by Dr. Thomas J. Ford, Jr., 209 Harvard Street, Brookline, MA 02146, to import from South Australia a piece of jaw tissue taken from a dead, stranded pygmy right whale (*Caperea marginata*) for scientific research purposes.

Notice is hereby given that on October 16, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above importation, subject to certain conditions set forth therein.

The application and accompanying documentation satisfy the issuance criteria for scientific research permits. The requested activities are consistent with the purposes and policies of the MMPA. The research will further a bona fide scientific purpose that does not involve unnecessary duplication of other research.

Documents submitted in connection with this permit are available for review in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/427–2289); and Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281–9200).

Dated: October 16, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–25439 Filed 10–22–91; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Negotiated Settlement on Import Limits and Guaranteed Access Levels for Certain Wool Textile Products Produced or Manufactured in the Dominican Republic

October 18, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit and announcing a guaranteed access level.

EFFECTIVE DATE: October 25, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 566–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

During recent negotiations between the Governments of the United States and the Dominican Republic, agreement was reached to establish limits for wool textile products in Category 448, produced or manufactured in the Dominican Republic and exported during the periods March 28, 1991 through November 30, 1991; December 1, 1991 through May 31, 1992; and June 1, 1992 through May 31, 1993.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish a limit for Category 448 for the first agreement period.

Also, the two governments agreed to establish Guaranteed Access Levels (GALS) for Category 448 for the periods beginning on December 1, 1991 and extending through May 31, 1992; and June 1, 1992 through May 31, 1993.

For goods to be exported from the Dominican Republic on and after December 1, 1991, the U.S. Customs Service will, beginning November 1, 1991, start signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Category 448 that are destined for the Dominican Republic and subject to the GAL established for Category 448. These products, which are assembled in the Dominican Republic from parts cut in the United States from fabric formed in the United States, are governed by Harmonized Tariff item number 9802.00.8010 and chapter 61 Statistical Note 5 and chapter 62 Statistical Note 3 of the Harmonized Tariff Schedule.

Interested parties should be aware that shipments of cut parts in Category 448 must be accompanied by a form ITA–370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in the Dominican Republic in order to qualify for entry under the Special Access Program.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 56 FR 22402, published on May 14, 1991; and 56 FR 27947, published on June 18, 1991.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 6594, published on March 4, 1987; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 18, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 13, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of wool textile products in Category 448, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on March 28, 1991 and extends through March 27, 1992.

Effective on October 25, 1991, you are directed to amend the restraint period for Category 448 to end on November 30, 1991 at a reduced level of 45,000 dozen [1]. Import charges already made to Category 448 shall be retained.

Beginning on November 1, 1991, U.S. Customs is directed to start signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Category 448 that are destined for the Dominican Republic and re-exported to the United States on and after December 1, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–25477 Filed 10–22–91; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after March 27, 1991.

DEPARTMENT OF DEFENSE

Department of the Army

Availability of the Draft Environmental Impact Statement (DEIS) for the Disposal of Chemical Munitions Stored at Umatilla Depot Activity, Oregon

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the notice of availability of the draft site-specific EIS on the potential impact of the construction and operation of the proposed chemical agent demilitarization facility at Umatilla Depot Activity, Oregon. The proposed facility will be used to demilitarize all chemical agents and munitions currently stored at the Umatilla Depot Activity. The draft site-specific EIS examines the potential impacts of on-site incineration, alternative locations for the disposal facility on Umatilla Depot Activity and the "no-action" alternative. The "no-action" alternative is considered to be deferral of demilitarization with continued storage of agents and munitions at Umatilla Depot Activity.

SUPPLEMENTARY INFORMATION: In its Record of Decision on February 26, 1988 (53 FR No. 38, pp. 5816–5817) for the Final Programmatic Environmental Impact Statement on the Chemical Stockpile Disposal Program (CSDP), the Department of the Army selected on-site disposal by incineration at all eight chemical munitions storage sites within the continental United States as the method by which it will destroy its lethal chemical stockpile. The Department of the Army published a Notice of Intent on February 6, 1989 (54 FR No. 23, pp. 5646–5647) which provided notice that, pursuant to the National Environmental Policy Act and

implementing regulations, it was preparing a draft site-specific EIS for the Umatilla chemical munitions disposal facility.

The Department of the Army prepared a draft site-specific EIS to assess the site-specific health and environmental impacts of on-site incineration of chemical agents and munitions stored at Umatilla Depot Activity. The DEIS for Umatilla is now available for comment. Copies may be obtained by writing the Program Manager for Chemical Demilitarization, ATTN: SAIL–PMM–N (Ms. Monica Satrape), Aberdeen Proving Ground, Maryland 21010–5401. The comments must be received by December 9, 1991, for consideration in the preparation of the Final Umatilla EIS. During the public comment period, a public hearing will be scheduled, if necessary.

ADDITIONAL INFORMATION: The Environmental Protection Agency will also publish a Notice of Availability of the DEIS in the **Federal Register**.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I,L&E).

[FR Doc. 91–25494 Filed 10–22–91; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 22, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: October 17, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Revision
Title: Application for Grants Under the Javits Gifted and Talented Students Education Grant Program
Frequency: Annually
Affected Public: State or local government; Businesses or other for profit; Non-profit institutions; Small businesses or organizations
Reporting Burden:
Responses: 300
Burden Hours: 12,000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State Educational Agencies to apply for grants under the Jacob K. Javits Gifted and Talented Students Education Grant Program. The Department uses the information to make grant awards.

Office of Postsecondary Education

Type of Review: Extension
Title: Application for New and Noncompeting Continuation Grants Under the Ronald E. McNair Post-Baccalaureate Achievement Program
Frequency: Annually
Affected public: State or local governments; Non-profit institutions
Reporting Burden:
Responses: 125
Burden Hours: 2,500
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State Educational Agencies to apply for grants under the Ronald E. McNair Post-Baccalaureate Achievement Program. The Department uses the information to make grant awards.

Office of Elementary and Secondary Education

Type of Review: Extension
Title: Continuation Application for Grants under Chapter 1 Migrant Education Coordination Program
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 10
Burden Hours: 360
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State Educational Agencies to apply for grants under the Chapter 1 Migrant Education Coordination Program. The Department uses the information to make grant awards.

[FR Doc. 91–25434 Filed 10–22–91; 8:45 am]

BILLING CODE 4000–01–M

Office of Vocational and Adult Education

National Literacy Act Provisions; Meetings

AGENCY: Department of Education.

ACTION: Notice of public meetings and request for public participation on the National Literacy Act of 1991.

SUMMARY: The Secretary of Education is sponsoring six public meetings to provide information and clarification regarding—

(a) Provisions of the National Literacy Act of 1991 (Pub. L. 102–73) that amend the Adult Education Act (Pub. L. 100–297);

(b) Provisions of the National Literacy Amendments (Pub. L. 102–103); and

(c) Proposed regulations soon to be published in the **Federal Register** that

are needed to implement legislative changes to programs for adult literacy administered by the Office of Vocational and Adult Education (OVAE).

Administrators involved with all types of adult education and literacy programs as well as persons from the public and private sectors, including business, organized labor, community organizations, volunteer literacy organizations, social services and human services agencies, job training and job placement agencies, correctional agencies, housing authorities, civic organizations and public officials, are invited to attend these public meetings.

The meetings will be conducted by Joan Seamon, Director of the Division of Adult Education and Literacy for the Office of Vocational and Adult Education, and staff from the Division of Adult Education and Literacy.

Information disseminated at the meetings will assist administrators and other persons involved in the provision of adult education and literacy services by clarifying the provisions of the National Literacy Act of 1991, including amendments to the Adult Education State-administered Basic Grant Program, the National Workplace Literacy Program and the Stateadministered Workplace Literacy Program; and four new programs, the State Literacy Resource Centers Program, the National Workforce Literacy Strategies Program, the Functional Literacy for State and Local Prisoners Program, and the Life Skills for State and Local Prisoners Program that will be administered by OVAE.

These public meetings will also assist administrators, teachers, and other persons involved in the provision of adult education and literacy services in considering submission of written comments to the Secretary of Education regarding the proposed regulations.

MEETING INFORMATION: The public meetings are scheduled to be held from 10 a.m. to 12 noon at the following locations:

October 21, 1991
U.S. Department of Education, 5th Floor, John W. McCormack P.O. and Courthouse, Post Office Square, Boston, MA

October 23 1991
U.S. Department of Education, room 700, 401 South State Street, Chicago, IL

October 25, 1991
U.S. Department of Education, room 3000, 4000 Maryland Avenue, SW, Washington, DC

October 29, 1991
U.S. Department of Education, room 440, 1244 Speer Boulevard, Denver, CO

October 31, 1991
U.S. Department of Education, room 260, 50 United Nations Plaza, San Francisco, CA

November 4, 1991
U.S. Department of Education, suite 2217, 101 Marietta Tower Building, Atlanta, GA

No reservations are required for attendance at these public meetings.

FOR FURTHER INFORMATION CONTACT: Persons seeking additional information should contact Mike Dean, Regulations Program Specialist, Division of Adult Education and Literacy, Office of Vocational and Adult Education, U.S. Department of Education, (Mary E. Switzer Building, room 4425), 400 Maryland Avenue, SW., Washington, DC 20202–7240. Telephone: (202) 732–2270; deaf and hearing impaired persons may call (202) 732–2235 for TDD services.

Dated: October 16, 1991.

Betsy Brand,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 91–25435 Filed 10–22–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 803–014 California]

Pacific Gas and Electric Co.; Availability of Environmental Assessment

October 17, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897, December 17, 1987), the Office of Hydropower Licensing has reviewed the application for amendment of license for the DeSabla-Centerville Project, located on the Butte Creek and the Upper Feather River and their tributaries in Butte County, California, near the cities of Red Bluff and Sacramento, and has prepared an Environmental Assessment (EA) for the proposed amendment. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed amendment and has concluded that approval of the proposed amendment would not constitute a major federal action significantly affecting the qualify of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91–25549 Filed 10–22–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP92–61–000, et al.]

Southern Natural Gas Co., et al.; Natural Gas Certificate Filings

October 16, 1991.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Co.

[Docket No. CP92–61–000]

Take notice that on October 8, 1991, Southern Natural Gas Company (Southern), filed in Docket No. CP92–61–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to integrate the operation of one Area Delivery Point into another Area Delivery Point pursuant to its blanket certificate of public convenience and necessity issued in Docket No. CP82–406–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it provides natural gas service to Alabama Gas Corporation (Alagasco) at various delivery points described in the Exhibit A to the currently effective Service Agreement between Southern and Alagasco dated September 17, 1991. Alagasco has requested that southern integrate the two points of delivery in the Leeds Area Delivery Point with the points of delivery in the Birmingham Area Delivery Point. Southern states that Alagasco has informed Southern that the integration would enable it to more efficiently operate the distribution of gas to its customers.

Southern states that no new facilities are proposed. Southern also states that the total Contract Demand to be delivered to Alagasco after the proposed consolidation will not exceed the total volumes authorized prior to the rearrangement, and the proposed activities are not prohibited by any existing tariff of Southern.

Comment date: December 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Pipeline Corp.

[Docket No. CP91-780-002]

Take notice that on October 7, 1991, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP91-780-002, pursuant to sections 7(b) and 7(c) of the Natural Gas Act, an amendment to its December 31, 1990 application in Docket No. CP91-780-000 in order to reflect the downsizing of its originally proposed $446 million, 534,007 Dth per day equivalent, system expansion project to a $373 million, 433,415 Dth per day equivalent project, all as more fully set forth in the amendment which is on file with the Commission and open for public inspection.

Specifically, in order to implement its downsized system expansion project, Northwest requests an order granting:

(1) A certificate of public convenience and necessity authorizing Northwest to construct and operate, at an estimated total project cost of about $373 million, approximately 379 miles of new loop and replacement pipeline in 19 major segments, approximately 89 miles of existing mainline requalified for higher operating pressures, 114,035 ISO horsepower of additional compression at 17 sites, and related upgrade facilities at existing compressor and meter stations, in order to expand its existing transmission system capacity on its mainline and major laterals primarily to accommodate 433,415 Dth per day of new firm service under 52 executed, long-term service agreements with 38 customers;

(2) Permission and approval to abandon 14.8 miles of its Klamath Falls Lateral, 0.8 miles of its Grants Pass Lateral and portions of existing metering facilities that are proposed to be replaced with upgraded facilities; and

(3) A certificate of public convenience and necessity authorizing the reallocation of existing firm daily delivery obligations among various delivery points for Washington Natural Gas Company and Intermountain Gas Company.

Northwest proposes to finance the construction cost of its system expansion with short-term bank borrowings. Northwest proposes to convert the short-term bank borrowings to an appropriate mix of long-term debt and equity which will provide an overall corporate capital structure of approximately 45% long term debt and 55% equity.

Northwest states that, as a result of the termination of contract commitments for 178,434 Dth per day of capacity for six customers, partially counterbalanced by 77,842 Dth per day of new commitments under 23 new firm transportation agreements with 16 customers, Northwest's requirements for system expansion facilities have been reduced. Northwest indicates that it no longer needs to install the originally proposed 247 miles of 24-inch pipeline loop on the southern half of its system and can reduce its originally proposed compressor requirements at six locations by 34,100 horsepower.

Northwest requests that the Commission's order issued on July 1, 1991, and as supplemented on August 16, 1991, in Docket No. CP91-780-000, providing a preliminary determination on all non-environmental issues be amended to reflect this downsizing. Northwest anticipates an in-service date of April 1, 1993.

Northwest states that, as five shippers terminated their system expansion transportation agreements and one elected to reduce its contract demand, Northwest held an open season from August 20 through August 27, 1991 during which it accepted contracts for new firm transportation service which could be accommodated within the 178,434 Dth per day of released system expansion capacity without requiring any increases in the originally proposed system expansion facilities. Northwest indicates that the open-season resulted in the execution of 23 firm transportation agreements, with a total contract demand of 77,842 Dth. Northwest further indicates that it needs system expansion facilities sufficient to accommodate only 433,415 Dth per day of service, instead of the 534,007 Dth per day originally proposed.

The following table summarizes the 433,415 Dth per day of additional firm contract demand committed under 52 expansion-related Rate Schedule TF-1 agreements with 38 customers to be provided by Northwest upon completion of the proposed system expansion:

RATE SCHEDULE TF-1: NEW EXPANSION TRANSPORTATION

Shipper	Type	Contract Demand (Dth/d)	Supply		Delivery Points
			Canada (Dth/d)	Domestic (Dth/d)	
1. Washington Natural	LDC	100,000	58,000	42,000	WGN
2. Southwest Gas	LDC	15,000		15,000	Paiute
3. Northwest Natural	LDC	50,000		50,000	NWN
3a. Northwest Natural	LDC	9,000	9,400		NWN
4. CP Natural	LDC	14,860	10,072	4,788	CPN
5. Sierra Pacific	LDC	9,000		9,000	Paiute
6. Intermountain Gas	LDC	7,000	4,200	2,800	IGC
7. City of Ellensburg, WA	LDC	1,500		1,500	Ellen.
8. Cascade Natural	LDC	1,078	1,078		CNG
8a. Cascade Natural	LDC	616		616	CNG
9. City of Enumclaw, WA	LDC	928		928	Enum.
Subtotal		209,382	82,750	126,632	
10. Cyanco	Enduser	2,000	2,000		Paiute
11. Eagle Picher	Enduser	1,680	1,680		Paiute
11a. Eagle Picher	Enduser	184	184		CNG
12. Hanson Natural (formerly Gold Fields)	Enduser	1,100	1,100		Paiute
13. Basic Inc.	Enduser	850	850		Paiute
14. Harrah's Club	Enduser	500	500		Paiute
15. Harvey's Resort Hotel	Enduser	380	380		Paiute
16. Desert Palace, Inc.	Enduser	300	300		Paiute
17. United Engine	Enduser	250	250		Paiute
18. High Sierra Hotel	Enduser	225	225		Paiute
19. Boeing	Enduser	12,600		12,600	WNG/NWN
19a. Boeing	Enduser	2,156	2,156		WNG
20. Simpson Paper	Enduser	10,000	10,000		WNG
20a. Simpson Paper	Enduser	1,000		1,000	NWN
21. James River	Enduser	8,000		8,000	NWN
21a. James River	Enduser	2,341	1,725	616	NWN

RATE SCHEDULE TF-1: NEW EXPANSION TRANSPORTATION—Continued

Shipper	Type	Contract Demand (Dth/d)	Supply		Delivery Points
			Canada (Dth/d)	Domestic (Dth/d)	
22. Domtar Gypsum	Enduser	3,000	3,000		WNG
23. Roseburg Forest	Enduser	1,250	725	525	Roseburg
24. Columbia Aluminum	Enduser	600	600		NWN
25. Tenaska	Enduser	616		616	CNG
Subtotal		49,032	25,675	23,357	
26. Husky Gas Marketing	Producer	10,000	10,000		KR
26a. Husky	Producer	4,311	4,311		EPNG
27. Washington Energy (formerly Thermal)	Producer	10,000	10,000		KR
27a. Washington Energy	Producer	616		616	WNG
28. Meridian Oil	Producer	616		616	CNG
Subtotal		25,543	24,311	1,232	
29. Texaco Gas Marketing	Marketer	30,000	30,000		EPNG
29a. Texaco Gas Marketing	Marketer	12,000		12,000	CNG
30. Grand Valley Gas	Marketer	10,196	10,196		WNG
30a. Grand Valley Gas	Marketer	616		616	CNG
31. Grand Valley Canada	Marketer	616		616	CNG
32. Grand Valley Services	Marketer	616		616	CNG
33. Centennial Natural	Marketer	616		616	CNG
34. Development Associates	Marketer	10,196	10,196		WNG
34a. Development Associates	Marketer	616		616	CNG
35. Pentzer Corp.	Marketer	10,196	10,196		WNG
35a. Pentzer Corp.	Marketer	616		616	CNG
36. WP Energy	Marketer	10,196	10,196		WNG
36a. WP Energy	Marketer	616		616	CNG
37. WP Energy Canada	Marketer	10,196	10,196		WNG
37a. WP Energy Canada	Marketer	616		616	CNG
Subtotal		97,908	80,980	16,928	
38. Pacific Gas Trans.	Interstate	51,550	51,550		PGT
Total		433,415	265,266	168,149	

Northwest states that the original expansion design included approximately 247 miles of pipeline loop and 30,780 horsepower of compression located south of Northwest's Muddy Creek Compressor Station, which was needed to move an additional 160,000 Dth per day to El Paso Natural Gas Company (El Paso). Northwest further states that all of the original proposed loop on the south end of its system can be eliminated from the expansion project and the proposed compression can be reduced by 6,610 horsepower, since Northwest is now only moving 34,311 Dth per day south to El Paso. Northwest indicates that the flows on the northern half of its system results in a further reduction of 27,490 in compression horsepower additions originally proposed.

Northwest submits that the proposed mainline looping and compression facilities, as amended, will increase its design day mainline south flow capacity by approximately 250 MDth per day from Sumas (the Canadian Border) into Northwest's northern Washington market area and by approximately 65 MDth per day from Wyoming south to El Paso. Northwest further submits that its design day mainline north flow capacity will be increased by approximately 110 MDth per day from Opal, Wyoming to the Pacific Northwest. Northwest states that the increased capacity south to El Paso will eliminate Northwest's existing reliance upon approximately 30 MDth per day of displacement capability to provide firm deliveries to El Paso for Pacific Interstate Transmission Company and ANR Pipeline Company under Northwest's Rate Schedule T-1 and X-87, respectively.

Northwest estimates that it will cost approximately $100,900 to remove all the facilities now proposed to be abandoned. Northwest states that the total original cost of the facilities now proposed to be abandoned is $552,349, with an estimated salvage value of $127,578.

Comment date: November 6, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. High Plains Natural Gas Co.

[Docket No. CP87-536-001]

Take notice that on October 4, 1991, High Plains Natural Gas Company (High Plains), 411 S. 2nd Street, Canadian, Texas 79014, filed in Docket No. CP87-536-001 an application to vacate an order issued December 31, 1987, in Docket No. CP87-536-000, 41 FERC ¶ 61,364, and also to vacate the service area determination made in that order, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The December 31, 1987, order granted authority pursuant to section 7(c) of the Natural Gas Act (NGA) for High Plains to acquire and operate Wheeler Gas, Inc.'s (Wheeler) interstate system.[1] The December 31, order also authorized, pursuant to section 7(f) of the NGA, a service area determination for the Wheeler service area, so that High Plains could enlarge or extend facilities within that service area without first seeking authorization by this Commission. It is explained that since the December 31, order, Congress enacted the Uniform Regulatory Jurisdiction Act of 1988, which amended the NGA by adding section 7(f)(2), 15 U.S.C. 717(f)(2). It is further explained that section 7(f)(2) of the NGA removes from the Commission's jurisdiction the transportation of gas by a pipeline that crosses a state line, when such transportation service is performed by the pipeline company within its defined service area. As a result of the changes to the section 7(f) regulations, High Plains requests that the Commission vacate its certificate authority to operate the Wheeler system, or, in the

[1] Wheeler's abandoned its system by sale to High Plains. High Plains operates the system essentially as a local distribution company even though its facilities cross a state line. High Plains' Wheeler service area includes Wheeler County, Texas and Roger Mills County, Oklahoma.

alternative, grant other authorizations, including abandonment authority, deemed necessary by the Commission to allow the separation of the Wheeler system into two intrastate systems subject to regulation by the respective state commissions.

High Plains contends that it is making the necessary arrangements to line up sufficient gas supply to meet the requirements of its customers in Oklahoma and Texas. High Plains proposes to serve its Wheeler customers in Oklahoma from a new interconnection with KN Energy, Inc. (KN). It is explained that KN will shortly make a prior notice filing (see § 157.204 of the Commission's Regulations) to add a transportation delivery point for deliveries to Wheeler's Oklahoma system. High Plains also explains that sales to its Oklahoma customers would continue to be regulated by the Oklahoma Corporation Commission. In addition, High Plains proposes to supply natural gas to the Wheeler customers in Texas from a planned interconnection with High Plains' intrastate system at the rate approved by the Texas Railroad Commission. As a result of the proposed changes, the Wheeler gas system in Texas would be operated independently of the system in Oklahoma.

High Plains contends that Commission action in this proceeding would neither affect the continued operation of facilities nor the quality of services currently performed by High Plains. High Plains states that its request to vacate the December 31, order is more appropriate than granting abandonment authority because it would continue to operate the Wheeler system, albeit as two separate intrastate systems.

Comment date: November 6, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Sea Robin Pipeline Co.

[Docket Nos. CP92–75–000, CP92–76–000, CP92–77–000]

Take notice that on October 10, 1991, Sea Robin Pipeline Company (Sea Robin) P.O. Box 1478, Houston, Texas 77251–1478, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP88–824–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Sea Robin and is summarized in the attached appendix.

Comment date: December 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP92–75–000 (10–10–91)	Columbia Gas Development Corporation (Producer).	50,000 50,000 18,250,000	Offshore LA	LA	8–29–91, ITS Interruptible.	ST91–10544, 9–5–91
CP92–76–000 (10–10–91)	O & R Energy, Inc. (Marketer).	50,000 50,000 18,250,000	Offshore LA	LA	8–22–91, ITS, Interruptible.	ST91–10545, 9–1–91
CP92–77–000 (10–10–91)	Oxy Gas Marketing Limited Partnership (Marketer).	100,000 100,000 36,500,000	Offshore LA	LA	6–24–91, ITS, Interruptible.	ST91–10543, 9–4–91

5. Overthrust Pipeline Co. and Texas Gas Transmission Corp.

[Docket No. CP92–69–000; Docket Nos. CP92–72–000, CP92–73–000]

Take notice that on October 9, 1991, Overthrust Pipeline Company, 79 South State Street, Salt Lake City, Utah 84111, and Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, Kentucky 42301, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP89–2062–000 and Docket No. CP88–686–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: December 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract rate schedule, service type	Related docket, start up date
CP92–69–000 (10–9–91)	Chevron U.S.A., Inc	[1] 400,000 40,000 14,600,000	Various	WY	9–26–91, IT, Interruptible.	ST92–55–000, 10–1–91.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract rate schedule, service type	Related docket, start up date
CP92-72-000 (10-9-91)	Seagull Marketing Services, Inc. (Marketer).	[2] 20,000 10,000 7,300,000	Offshore TX	Offshore TX	8-21-91, IT, Interruptible.	ST91-10297, 8-25-91.
CP92-73-000 (10-9-91)	Seagull Marketing Services, Inc. (Marketer).	[2] 20,000 10,000 7,300,000	Offshore TX	Offshore TX	8-21-91, IT, Interruptible.	ST91-10298, 8-25-91.

[1] Mcf.
[2] MMBtu.

6. El Paso Natural Gas Co.

[Docket No. CP92-44-000]

Take notice that on October 7, 1991, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP92-44-000 a request pursuant to § 157.205 of the Commission's Regulations to construct and operate a field compressor station and to operate a portion of an existing non-jurisdictional pipeline located in San Juan County, New Mexico for delivery of certain volumes of natural gas into its San Juan Triangle System from the San Juan Basin production area located in Colorado and New Mexico, under El Paso's blanket certificate issued in Docket No. CP82-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

El Paso proposes to construct and operate the Rio Vista Field Compressor Station (Rio Vista) consisting of two 5,500 site-rated horsepower (ISO) compressor units, two 1,160 ISO compressor units and 0.01 miles of 20-inch pipeline with appurtenances to connect to the Exchange Point No. 37 Line (Blanco line) in San Juan County, New Mexico; and to operate in interstate commerce a 3.13 mile segment of the non-jurisdictional Blanco line consisting of approximately 1.53 miles of 20-inch pipeline and 1.60 miles of 34-inch pipeline commencing at the outlet side of the Blanco "A" Field Plant (Blanco plant) and terminating at the proposed Rio Vista in San Juan County, New Mexico.

El Paso states that it uses the Blanco plant to compress quantities of natural gas received from: (1) The Blanco Field; (2) El Paso's Colorado Dry Gas Gathering System (Colorado system); and (3) Gas Company of New Mexico (GCNM) for delivery into El Paso's 34-inch mainline. El Paso states that Rio Vista would allow El Paso to base-load the Colorado system and GCNM volumes to Rio Vista and to use the Blanco plant for peaking service for Colorado system, GCNM and Blanco field volumes. Further, El Paso indicates that it would use the 3.13 miles segment of the Blanco line, which receives the Colorado system gas from its 12 3/4-inch Ignacio line, to re-route the Colorado system volumes from the Blanco plant to Rio Vista. Due to increases in gas production availability in the San Juan Basin production area, El Paso indicates that the least cost solution for moving additional gas production is the installation of a new field compressor station and the certificating for operation of the existing non-jurisdictional facilities. El Paso further states that with the installation of these facilities El Paso would obtain increased flexibility to deliver gas into its mainline system; facilitate the delivery of additional gas supplies to market by producers; provide more reliable service to producers operating in these areas; and allow El Paso to increase its receipt capacity from the Colorado system and GCNM by approximately 53 MMcf per day. The estimated cost of the facilities is $15,208,590.

El Paso states the construction of these facilities would not adversely affect the quality of service provided to existing transportation customers and that existing customers would benefit from the new facilities due to the increased access to additional gas reserves which would enhance the quality of service to all customers served through the system.

Comment date; December 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

7. Questar Pipeline Co.

[Docket No. CP92-68-000]

Take notice that on October 9, 1991, Questar Pipeline Company (Questar) of 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP92-68-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service to Amoco Production Company (Amoco) at a new delivery point, under the blanket certificate issued in Docket No. CP88-650-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar states that pursuant to a transportation service agreement dated October 13, 1988, as amended, under its Rate Schedule T-2, it seeks authority to add the East Anschutz delivery point and increase the estimated maximum daily quantity of natural gas transported for the account of Amoco, a producer, from various receipt points on Questar's system to various delivery points located in Wyoming from 8,856 MMBtu TO 16,000 MMBtu per day.

Questar further states that the estimated average daily and annual quantities are 500 MMBtu and 182,500 MMBtu, respectively and that service commenced September 4, 1991, under the provisions of 18 CFR 284.223(a), as reported September 17, 1991, in Docket No. ST91-10415-000.

Comment date: December 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by

sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the 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 § 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 therefore, the proposed activities 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.

Lois D. Cashell,

Secretary.

[FR Doc. 91–25550 Filed 10–22–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD92–00540T Texas–10 Addition 9]

State of Texas; Determination Designating Tight Formation

October 17, 1991

Take notice that on October 15, 1991, the Railroad Commission of Texas (Texas) submitted the above-referened notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Edwards Limestone Formation located in a portion of Karnes County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The designated area is rectangular and measures approximately 2.5 miles by 4 miles. The designated area consists of approximately 6,800 acres located in the northwestern portion of the Carlos Martinez Survey Abstract A–6, Karnes County, Texas, and includes wells in the Kenedy, SW (Edwards) Field and the Kenedy, Central (Edwards) Field.

The notice of determination also contains Texas' findings that the referenced portion of the Edwards Limestone Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–25551 Filed 10–22–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD92–00603T Wyoming–23]

State of Wyoming Oil and Gas Conservation Commission; Determination Designating Tight Formation

October 17, 1991.

Take notice that on October 15, 1991, the State of Wyoming, Oil and Gas Conservation Commission (Wyoming) submitted the above referenced notice of determination to the Commission pursuant to section 271.703(c)(3) of the Commission's regulations, that the Second Frontier Formation in a portion of Sweetwater County, Wyoming, qualifies as a tight formation under section 107(b) of the National Gas Policy Act of 1978 (NGPA). The notice of determination covers the following geographical area: All Sections in T22N, R102W; Sections 1, 2, 11–14, 23–26, 35, and 36 in T22N, R103W; all Sections in T21N, R102W; Sections 1, 2, 11–14, 23–26, 35, and 36 in T21N, R103W; and Sections 1–12 in T20N, R102W.

The notice of determination also contains Wyoming's findings that the referenced portion of the Second Frontier Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NW Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–25552 Filed 10–22–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–97–000]

Alabama-Tennessee Natural Gas Co.; Request Under Blanket Authorization and Request for Waiver

October 16, 1991.

Take notice that on October 15, 1991, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), P.O. Box 918, Florence, Alabama 35631, filed in Docket No. CP92–97–000 a prior notice request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate five sales taps to two existing local distribution customers under the blanket certificate issued in Docket No. CP85–359–000 pursuant to section 7 of the Natural Gas Act. Alabama-Tennessee also requests a limited waiver of section 17.3 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1 in connection with one of the sales taps, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Alabama-Tennessee requests authorization to relocate, upgrade and operate an existing sales tap in order to provide gas sales and transportation deliveries to North Alabama Gas District (NAGD). Alabama-Tennessee states that the sales tap located in Colbert County, Alabama, would be relocated a distance of no more than ten feet along an existing line in order to install a newer and safer regulator, meter and valves to accommodate NAGD's operational needs resulting from a shifting of, and growth in, NAGD's service territory. Alabama-Tennessee states that under the NAGD sales contract dated September 1, 1987, Alabama-Tennessee is permitted to deliver up to a maximum of 9,695 dekatherms of gas on a peak and average day and up to 3,538,675 dekatherms annually at the proposed sales tap. Alabama-Tennessee states that under the NAGD transportation agreement dated January 29, 1991, it is permitted to deliver up to a maximum of 10,000 dekatherms of gas on a peak and

average day and up to 3,650,000 dekatherms annually.

Alabama-Tennessee also seeks authorization to construct and operate four sales taps in order to provide natural gas sales and transportation deliveries in the City of Sheffield, Alabama (Sheffield), all to be located in Colbert County, Alabama. Alabama-Tennessee states that sales deliveries at these taps will be made pursuant to a general service gas sales contract dated July 1, 1975 and that transportation deliveries will be made under an interruptible transportation agreement dated January 29, 1990. Alabama-Tennessee states that under the sales contract and transportation agreement, Alabama-Tennessee is permitted to deliver at any of its delivery points with Sheffield up to a maximum of 6,094 dekatherms of gas on a peak and average day and up to 2,224,471 dekatherms annually. Alabama-Tennessee states that the proposed taps will be used to meet Sheffield's system needs which recently has experienced a shifting of, and growth in, load to a different portion of its service territory.

In connection with the addition of one of the taps to Sheffield, the Baker Lane tap, Alabama-Tennessee requests a limited waiver of section 17.3 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1 (Fourth Revised Sheet No. 50), which provides that:

> *Modification of Service Agreement:* No modification of the terms and provisions of an executed Service Agreement shall be made except by the execution of another written Service Agreement * * *

Alabama-Tennessee states that because the location of the proposed Baker Lane sales tap does not come within the delivery point description under the Sheffield sales contract, Alabama-Tennessee will be required to execute another service agreement with Sheffield under section 17.3, unless the waiver sought herein is granted. Alabama-Tennessee believes that no purpose would be served in executing a new service agreement for such an incidental revision to the current service agreement, especially because execution of a new service agreement would affect Sheffield's rights under section 284.10 of the Commission's Regulations.[1]

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 date 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.

[1] 18 CFR 284.10.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25553 Filed 10-22-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT91-42-000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariffs

October 17, 1991

Take notice that Valero Interstate Transmission Company ("Vitco"), on September 30, 1991 tendered for filing the following Revised FERC Gas Tariffs:

FERC Gas Tariff, First Revised Volume No. 1

Original Sheet Nos. 1 through 99

FERC Gas Tariff, First Revised Volume No. 2

Original Sheet Nos. 1 through 41

Vitco states that this filing reflects revised tariff sheets which will be compatible with the Commission's electronic tariff database. This filing is being made pursuant to the August 21, 1991 Commission Letter Order in Docket Nos. TQ91-3-56-000 and GT91-32-000.

The proposed effective date of the above filing is November 1, 1991. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by November 1, 1991.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 24, 1991. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25554 Filed 10-22-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4023-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 22, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Refiner and Importer Anti-Dumping Baseline Data Report (EPA ICR# 1600.01). This ICR requests approval for a new collection.

Abstract: The Clean Air Act Amendments of 1990 require that each refiner's, blender's and importer's post-1994 conventional gasoline not result in more emissions of particular pollutants than its 1990 gasoline. This collection, which will assist the Agency in determining baseline physical and chemical characteristics of gasoline shipments from 1990, and possibly 1991 and 1992, requires refiners, blenders and importers of 1990 gasoline shipments to report the following parameter data for each calendar month for each refinery: Benzene content, aromatic content, olefin content, sulfur content, oxygenate content, distillation curve temperature at 10, 50 and 90 percent volume evaporated, and RVP. If there is insufficient data available from 1990, affected facilities will report data from 1991. If there is insufficient 1991 data, affected facilities will collect and report 1992 data. The Environmental Protection Agency will use these data to evaluate

the three methods for determining each party's 1990 gasoline composition which were proposed July 9, 1991, 56 FR 31176. The information will also be used to evaluate the cost and environmental impacts of complying with the proposed anti-dumping provisions.

Burden Statement: The public reporting burden for this collection of information is estimated to average 410 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Refiners, blenders and importers of 1990 gasoline.

Estimated Number of Respondents: 250.

Estimated Total Annual Burden on Respondents: 102,500 hours.

Frequency of Collection: One time.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460
and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20530.

Dated: October 15, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

Attachment

Certified Mail
Return Receipt Requested

[Name and address of refiner or importer]

Dear [M. Refiner]: The Clean Air Act Amendments of 1990 (CAAA) require the use of reformulated gasolines in severe and extreme ozone nonattainment areas of the country beginning in 1995. Other ozone nonattainment areas of the country beginning in 1995. Other ozone nonattainment areas can opt into the reformulated gasoline program. Additionally, the CAAA specify "anti-dumping" provisions so that areas receiving nonreformulated, or conventional, gasoline do not experience an increase in emissions due to the reformulated gasoline program.

As described in EPA's Notice of Proposed Rulemaking (NPRM) for the Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline (July 9, 1991, 56 FR 31176), a critical part of the anti-dumping provisions is the determination of baseline fuel parameter values for each refiner or importer (blenders are considered refiners by EPA definition). EPA is confident that the oxygen, benzene and aromatic content of gasoline, and its RVP, impact emissions from use of that gasoline. Other fuel parameters that EPA is currently studying with regard to their effect on emissions include the distillation curve temperatures and the sulfur and olefin content of a gasoline. The value of a fuel parameter can be used in emissions modeling to determine emissions from gasoline use.

Three methods (Methods 1, 2, and 3) were proposed in the NPRM for the determination of baseline fuel parameters for gasoline produced in a refinery engaged in the production of gasoline blendstocks (as opposed to a refinery engaged primarily in the simple purchase and blending of blendstocks). The three proposed methods are as follows:

Method 1 The baseline value of a fuel parameter shall be determined from records of 1990 shipments of finished gasoline.

Method 2 The baseline value of a fuel parameter shall be determined from 1990 gasoline blendstock composition data and 1990 production data.

Method 3 The baseline value of a fuel parameter shall be determined from 1991 blendstock composition data and 1990 production data, if a refiner can demonstrate that 1991 gasoline blendstock composition is substantially the same as in 1990.

These methods are hierarchical in that a parameter value must be established by Method 1 if data is available on that parameter for a Method 1 determination. If data is not available for a Method 1 determination, then the parameter value must be established by Method 2 if data is available for a Method 2 determination. If data is not available for a Method 2 determination, then the parameter value must be established by Method 3.

In order for EPA to better evaluate the proposed methods of baseline determination and to understand the ramifications of adopting the proposed approaches for dealing with the anti-dumping provisions, it would be useful to have each refiner's or importer's data with regard to baseline fuel parameter determination by the methods described above.

Section 114 of the Clean Air Act authorizes EPA to require any person who operates any emission source or who is subject to any requirement of this Act to provide information that the Agency needs to carry out any provision of the Act. EPA is hereby requiring refiners whose gasoline is produced in a refinery engaged in the production of gasoline blendstocks to submit data relevant to calculating certain gasoline baseline fuel parameters by the methods described above. Specific instructions and data requirements are described in Enclosures 1 and 2.

In the NPRM, EPA proposed that gasoline be treated either as gasoline produced in a refinery engaged in the production of gasoline blendstocks or as gasoline produced in a refinery engaged primarily in the simple purchase and blending of blendstocks. Refiners engaged in the latter type of refinery operational mode are commonly called "blenders". As stated above, Methods 1, 2 and 3 apply to gasoline produced in a refinery engaged in the production of gasoline blendstocks. As proposed in the NPRM, Method 1 also applies to gasoline produced in a refinery engaged primarily in the simple purchase and blending of blendstocks and is the only method blenders are allowed to use. EPA believes that very few blenders will have sufficient data for a Method 1 baseline determination. For the purposes of this ICR, EPA is not requiring blenders to submit baseline data.

Baseline determination for imported gasoline would also depend upon the type of refinery in which the gasoline was produced. Those importers whose imported gasoline is produced in a refinery engaged in the production of gasoline blendstocks are subject to the requirements of this request. Those importers whose gasoline is produced in a refinery which primarily purchases and blends blendstocks are not subject to the requirements of this ICR.

For those refiners and importers subject to the requirements of this request and who do not have sufficient data to determine a fuel parameter value by Method 1 or Method 2 and who also have not obtained sufficient 1991 data for a Method 3 determination (as described in Enclosure 2 for Method 3), EPA requires that from the date which is one day after receipt of this letter, refiners begin to obtain data for each batch of gasoline blendstock as described in Enclosure 2 for Method 3 until sufficient data for a Method 3 determination is obtained.

Data and supporting documentation for parameter determination by Methods 1 and 2 shall be submitted within thirty (30) days of your receipt of this letter to: Christine Bruner (re: baseline data), U.S. EPA, Standards Development and Support Branch, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

Data and supporting documentation for parameter determination by Method 3 shall be submitted to the above address no later than July 1, 1992.

Should compliance with this request require an extension of the period for reply or modification as to the scope of the request, you may make a written request to the Agency of this nature within five (5) days of your receipt of this letter.

Replies to this ICR shall be full, complete, and to the best of your knowledge. A reply which is false, misleading or made without regard to its veracity is, in our judgment, tantamount to a refusal to submit information. Such a reply could be cause for initiation of civil proceedings by the U.S. Environmental Protection Agency for refusal to submit information. Failure to supply the requested information will subject you to a civil penalty of up to $25,000 per day of violation, 42 U.S.C. 7413. A knowing and willful submission of false, fictitious or fraudulent statements or representations will subject you to possible criminal liability, 18 U.S.C. 1001.

Pursuant to regulations appearing at 40 CFR part 2, you are entitled to assert a confidentiality claim covering any part of the submitted information. If you do not assert such a claim, the submitted information may be made available to the public without further notice. Information subject to a business confidentiality claim may be made available to the public only to the extent set forth in the above cited regulations.

If the regulations appearing at 40 CRF part 2, you are entitled to assert a confidentiality claim covering any part of the submitted

information. If you do not assert such a claim, the submitted information may be made available to the public without further notice. Information subject to a business confidentiality claim may be made available to the public only to the extent set forth in the above cited regulations.

If the methods proposed in the NPRM for baseline determination are included in the final rulemaking and the submitted data is also part of the data requirements of the final rule, the data submitted to EPA will be given by EPA to the independent baseline auditor described in the NPRM under the anti-dumping provisions. Thus duplicate data will not be needed.

If you have any further questions concerning this request for information, you may contact Christine Brunner at the above address or by telephone at (313) 668-4287.

Sincerely,

Richard D. Wilson,

Director, Office of Mobile Sources.

Enclosure 1—United States Environmental Protection Agency

Request for Information pursuant to Section 114 of the Clean Air Act, 42 U.S.C. 7414

Instructions:

1. Submission requirements shall be as described in Enclosure 2.

2. This request for information and production of pertinent data applies to all information and documents which are in the possession, control, or custody of any owner, officer, employee, agent, servant, attorney, accountant, or assignee of your company, including any gasoline testing laboratory used by your company to test gasoline.

3. This request is deemed continuing. You have a duty to supplement your responses with any and all pertinent information available to your company, its attorneys, agents, employees or other representatives which is acquired after your initial or subsequent responses.

4. If a request is not answered in full after the exercise of due diligence to secure complete information, so state and answer to the extent possible, and state the specific ground for not answering in full, and whether additional information may be forthcoming to otherwise complete the answers.

Enclosure 2—United States Environmental Protection Agency

Request for Information pursuant to Section 114 of the Clean Air Act, 42 U.S.C. § 7414

Submission Requirements:

(1) Name, address and telephone number of company contact;

(2) Data for each of the following parameters shall be reported in tabular form by calendar month and identified by refinery, including refineries associated with imported gasoline: Benzene content; aromatic content; olefin content; sulfur content; oxygenate content and type of oxygenate; distillation curve temperature at 10, 50, and 90 percent by volume evaporated; and RVP.

(a) *Method 1* The following data on 1990 shipments of finished gasoline is required: total number of 1990 shipments of finished gasoline; volume of each shipment; and, if sampled and measured, the fuel sampling date, parameter measurement date and parameter value of each shipment. The above data shall be considered sufficient only if a minimum of six (6) shipments were sampled in each calendar month over a minimum of six (6) months in 1990, with three of the months being in the range March-July inclusive, and three months in the range August-February inclusive. However, if more than the minimum data exists, all available data shall be submitted. If insufficient data exists for the determination of any parameter by this method, then the data required by Method 2 below shall also be submitted.

(b) *Method 2* The following data on each type of 1990 gasoline blendstock is required: Total number of 1990 batches of that type of blendstock; volume of each batch; and, if sampled and measured, blendstock sampling date, parameter measurement date and parameter value of each batch. Batches of blendstock shall include volumes purchased or received from internal or external sources. All batches or distinct volumes of blendstock shall be identified as either produced at the refinery, purchased from within or outside of the company, or transferred from within or outside of the company. The above data shall be considered sufficient only if a minimum of six (6) blendstock batches (of each type of blendstock) were sampled in each calendar month over a minimum of six (6) months in 1990, with three of the months being in the range March-July inclusive, and three months in the range August-February inclusive. However, if more than the minimum data exists, all available data shall be submitted (including all available Method 1 data). If insufficient data exists for the determination of any parameter by this method, then the data required by Method 3 below shall also be submitted.

(c) *Method 3* The following data on each type of 1991 and 1992 gasoline blendstock is required: Total number of 1991 or 1992 batches of that type of blendstock; volume of each batch; and, if sampled and measured, blendstock sampling date, parameter measurement date and parameter value of each batch. Batches of blendstock shall include volumes purchased or received from internal or external sources. All batches or distinct volumes of blendstock shall be identified as either produced at the refinery, purchased from within or outside of the company, or transferred from within or outside of the company. The above data shall be considered sufficient only if a minimum of six (6) blendstock batches (of each type of blendstock) were sampled in each calendar month over a minimum of six (6) months from January 1, 1991 through June 1, 1992, with three of the months being in the range March-July inclusive, and three months in the range August-February inclusive. However, if more than the minimum data exists, all available data shall be submitted (including all available Method 1 and Method 2 data).

[FR Doc. 91-25537 Filed 10-22-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-300241; FRL 3998-6]

Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act Good Laboratory Practices Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Enforcement Response Policy (ERP) for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Good Laboratory Practices (GLP) Regulations. This policy sets forth the procedures that will be used to determine the appropriate civil penalty or other enforcement action to be taken in response to violations of the FIFRA GLPS found at 40 CFR part 160. This policy is a supplement to the July 2, 1990 FIFRA Enforcement Response Policy (ERP) and is to be used in conjunction with the policies and matrices found in that ERP. The FIFRA GLP ERP is effective immediately and, except for the July 2, 1990 FIFRA ERP, 55 FR 30032 (July 24, 1990), supersedes any previous guidance on the appropriate enforcement response for violations of the FIFRA GLPS.

ADDRESSES: Persons interested in receiving a copy of the FIFRA GLP ERP should contact: FIFRA GLP ERP, Pesticide Enforcement Policy Branch, Office of Compliance Monitoring (EN-342W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Daniel A. Helfgott, Office of Compliance Monitoring (EN-342W), 401 M St., SW., Washington, DC 20460 (703) 308-8383.

SUPPLEMENTARY INFORMATION: On September 30, 1991, the EPA issued the Enforcement Response Policy (ERP) for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Good Laboratory Practice (GLP) Regulations. Once the documentation of a FIFRA GLP violation is complete, the FIFRA GLP ERP will be used to select the appropriate enforcement response in consideration of the type and severity of the FIFRA GLP violation. Violations of the FIFRA GLPs may involve violations of FIFRA sections 12(a)(2)(B)(i), 12(a)(2)(M), 12(a)(2)(Q), or 12(a)(2)(R). Appropriate enforcement responses for violations of the FIFRA GLPs include notices of warning, civil penalties of up to $5,000 per offense, and criminal penalties. In addition to these enforcement responses, the ERP includes a section which describes referrals to other EPA offices for

consideration of regulatory responses to violations of the FIFRA GLPs. These regulatory actions include: rejection of studies which do not comply with the FIFRA GLPs; cancellation, suspension, or modification of a pesticides research or marketing permit; or denial or disapproval of an application for such a permit. Further, pesticide testing facilities responsible for significant or major GLP violations may be suspended or debarred from participation in Government contracts, subcontracts, and assistance loan and benefit programs. This action is not for the punishment of the violator nor is it an enforcement tool, but rather it is for the protection of the Federal Government by assuring that the Government will be dealing with responsible contractors.

Dated: October 11, 1991.

Michael M. Stahl,

Director, Office of Compliance Monitoring, Office of Pesticides and Toxic Substances.

[FR Doc. 91-25320 Filed 10-22-91; 8:45 am]
BILLING CODE 6560-50-F

[OPP-34019; FRL 3942-2]

Pesticide Reregistration; Outstanding Data Requirements for Certain List B Active Ingredients (Third Notice)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1988 establishes a five-phase process for the reregistration of pesticide products containing active ingredients "contained in any pesticide first registered before November 1, 1984." During Phase 1 the Environmental Protection Agency (the Agency) divided the active ingredients subject to reregistration into four lists; List B was published in the **Federal Register** (54 FR 22706) on May 25, 1989. FIFRA requires the Administrator during Phase 4 of reregistration to publish the outstanding data requirements identified for those active ingredients being supported for reregistration. The Agency published in the **Federal Register** (56 FR 6849) on February 20, 1991 the first 10 active ingredients on List B and their outstanding data requirements. A second Notice posting the outstanding data requirements for 30 additional List B active ingredients was published in the **Federal Register** on August 7, 1991 (56 FR 37610). This third Notice now lists the outstanding data requirements for 35 more active ingredients on List B. The remaining ones will be addressed in one or more additional Notices to be published in the next several months.

FOR FURTHER INFORMATION CONTACT: By mail, Denise Greenway, Special Review and Reregistration Division (H-7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, Crystal Station 1, 2800 Crystal Drive, Arlington, VA 22202. Telephone No. (703) 308-8179.

SUPPLEMENTARY INFORMATION: This Notice identifies, pursuant to FIFRA section 4(f)(1)(B), the outstanding data requirements needed for reregistration of certain of the active ingredients on List B. That section also calls for the separate issuance of Data Call-In notices to registrants to obtain information satisfying these data requirements. The Agency has recently issued such Data Call-In notices to the appropriate registrants.

This SUPPLEMENTARY INFORMATION is divided into four units. Unit I provides background information on pesticide reregistration. Unit II discusses the requirements of section 4(f)(1)(B). Unit III describes the process used by the Agency in identifying outstanding data requirements. It also contains a table of the outstanding data requirements for each active ingredient. Unit IV describes the Data Call-In notices that have been issued to obtain data to satisfy the data requirements identified in this Notice.

I. Background

Section 4 of FIFRA as amended in 1988 required the Agency to conduct pesticide reregistration of older pesticides in five phases. In Phase 1, the Agency published Lists A, B, C, and D of pesticide active ingredients subject to reregistration. For Lists B, C, and D in Phase 2, registrants seeking reregistration had to identify for the Agency any data requirements which registrants believe would apply to their active ingredients, and indicate the ones that they thought were now satisfied. For those that were not satisfied, registrants had to indicate how they would fulfill the remaining data requirements necessary for the reregistration of their products. In Phase 3, these registrants summarized and in some cases reformatted studies that they believed were adequate and that they had previously submitted to the Agency. In Phase 4, the Agency is directed to review the materials submitted by registrants in Phases 2 and 3, and to identify the outstanding data requirements that need to be fulfilled in order for the Agency to determine whether or not pesticides containing particular active ingredients are eligible for reregistration. The Agency is further directed to issue Data Call-In notices to obtain data to satisfy these outstanding requirements. Finally, in Phase 5, the Agency must review the data submitted by registrants; determine whether pesticides containing particular active ingredients are eligible for reregistration; obtain product-specific information needed to determine whether particular products should be reregistered; and make final determinations on whether such products should be reregistered. The final determination on reregistration is to be based on whether a pesticide meets the standards of FIFRA section 3(c)(5), which prescribes the standards for initial registration of pesticides. If the Administrator determines that a pesticide should not be reregistered, section 4 directs the Administrator to take appropriate regulatory action.

Pursuant to FIFRA section 4(c)(2)(B) the Agency published in the **Federal Register** on May 25, 1989, a list of 229 chemicals (in 149 review cases) constituting List B of reregistration. The Agency then sent guidance on how to comply with Phase 2 of reregistration to all registrants of pesticides containing active ingredients on List B. Registrants were required by August 25, 1989, to inform EPA of their intent to seek or not to seek reregistration, to identify data requirements they believe applied to their active ingredients in their products, to identify the data requirements for which they have already submitted adequate data, and to commit to replace missing or inadequate data concerning the List B active ingredients contained in their products.

To assist registrants in complying with Phase 3, the Agency issued on December 24, 1989 the FIFRA Accelerated Reregistration —Phase 3 Technical Guidance (EPA No. 540/09-90-078). This document provides detailed instructions on: (i) Summarizing studies, (ii) reformatting studies, (iii) identifying adverse information, and (iv) identifying previously submitted studies that may not fully satisfy current requirements. To meet the requirements for Phase 3, registrants were required to submit summaries of previously submitted studies that they wished to rely on for reregistration. Additionally, for studies submitted prior to January 1, 1982, registrants had to submit a reformatted version of the study, if data were for certain toxicological and residue chemistry guidelines. Registrants were to certify that the raw data for the previously submitted studies were either in their possession, or in the possession

of the Agency, or were readily accessible elsewhere. Registrants were to identify and submit any data considered under section 6(a)(2) to show an adverse effect of the pesticide. Also, registrants were to identify any other information they considered to be supportive of registration. And registrants had to commit to fill any new data gaps identified by them. FIFRA required that these actions be completed by registrants of products containing List B chemicals by May 25, 1990.

In Phase 4, the Agency has been conducting a review of the adequacy of the data submitted by registrants for active ingredients on List B during Phases 2 and 3 and in compliance with any Data Call-In notices previously issued under section 3(c)(2)(B) of FIFRA. The purpose of the Agency's review was to systematically identify all data requirements for active ingredients that, based on information available to the Agency at this time, are necessary for a determination of eligibility for reregistration. For many active ingredients, registrants may have already committed to meet some of those requirements but have not yet submitted the results of their studies to the Agency. Concurrently, to effect the submission of those data for which commitments have not yet been made, the Agency issued Data Call-In notices to affected registrants for the additional data required by the Agency. This Notice identifies the outstanding data requirements for 35 active ingredients. It includes any new data requirements identified that are the subject of Data Call-In notices being sent to affected registrants, as well as any other prior commitments of unfulfilled data requirements. Collection of this information is authorized under the Paperwork Reduction Act by the Office of Management and Budget under OMB Control No. 2070–0107.

II. Outstanding Data Requirements

Section 4 (f)(1)(B) of FIFRA requires the Agency to publish this Notice of outstanding data requirements for each active ingredient on Reregistration List B. The Agency has been conducting a review of the information provided on all List B submissions on record for data adequacy and completeness, and has identified in this followup Notice a partial list of those chemicals with outstanding data requirements. Section 2(ff) of FIFRA defines outstanding data requirements as "a requirement for any study, information, or data that is necessary to make a determination under section 3(c)(5) and which study, information, or data — (A) has not been submitted to the Administrator; or (B) if submitted to the Administrator, the Administrator has determined must be resubmitted because it is not valid, complete, or adequate to make a determination under section 3(c)(5) and the regulations and guidelines issued under such section."

For purposes of the **Federal Register** Notice, outstanding data requirements include all requirements identified by the Agency which have yet to be satisfied at the active ingredient level, before or pursuant to Phases 2, 3, and 4 of reregistration. If registrants committed during Phases 2 and 3 or pursuant to prior actions to submit data to fulfill certain data requirements, and the data have not yet been submitted, the Agency is identifying them as outstanding. Upon review of the completed studies submitted either in response to earlier Data Call-In notices or as part of the reregistration process, the Agency may need to call in some additional studies before a final determination on reregistration can be made.

As in the previous **Federal Register** Notices, the following Table 1 provides a complete listing of the Guideline Reference Numbers (GRN) and corresponding titles for the data requirements referred to in this Notice.

TABLE 1.—STUDY TITLES AND GUIDELINE REFERENCE NUMBERS OF REREGISTRATION DATA REQUIREMENTS

Guideline Reference No.	Test or Study
61–1	Product Identification and Disclosure of Ingredients[1]
61–2(a)	Description of Beginning Materials and Manufacturing Process[2]
61–2(b)	Discussion of Formation of Impurities[3]
62–1	Preliminary Analysis[4]
62–2	Certification of Limits[5]
62–3	Analytical Methods to Verify Certified Limits[6]
Physical and Chemical Characteristics[7].	
63–2	Color
63–3	Physical State
63–4	Odor
63–5	Melting Point
63–6	Boiling Point
63–7	Density, Bulk Density, or Specific Gravity
63–8	Solubility
63–9	Vapor Pressure
63–10	Dissociation Constant
63–11	Octanol/Water Partition Coefficient
63–12	pH
63–13	Stability
63–14	Oxidizing or Reducing Action
63–15	Flammability
63–16	Explodability
63–17	Storage Stability
63–18	Viscosity
63–19	Miscibility
63–20	Corrosion Characteristics
63–21	Dielectric Breakdown Voltage
64–1	Submittal of Samples
Wildlife and Aquatic Organisms Data Requirements[8].	
71–1(a)	Acute Avian Oral Toxicity (LD50) in Bobwhite Quail or Mallard Duck
71–1(b)	Acute Avian Oral Toxicity (LD50) in Bobwhite Quail or Mallard Duck (Using Typical End-Use Product)
71–2(a)	Acute Avian Dietary Toxicity (LC50) in Bobwhite Quail

TABLE 1.—STUDY TITLES AND GUIDELINE REFERENCE NUMBERS OF REREGISTRATION DATA REQUIREMENTS—Continued

Guideline Reference No.	Test or Study
71-2(b)	Acute Avian Dietary Toxicity (LC50) in Mallard Duck
71-3	Wild Mammal Toxicity Test
71-4(a)	Avian Reproductive Toxicity in Bobwhite Quail
71-4(b)	Avian Reproductive Toxicity in Mallard Duck
71-5(a)	Simulated Terrestrial Field Study
71-5(b)	Actual Terrestrial Field Study
72-1(a)	Fish Toxicity in Bluegill Sunfish
72-1(b)	Fish Toxicity in Bluegill Sunfish (Using Typical End-Use Product)
72-1(c)	Fish Toxicity in Rainbow Trout
72-1(d)	Fish Toxicity in Rainbow Trout (Using Typical End- Use Product)
72-2(a)	Invertebrate Toxicity Freshwater LC50 (*Daphnia* Preferred)
72-2(b)	Invertebrate Toxicity Freshwater LC50 (*Daphnia* Preferred-Using Typical End-Use Product)
72-3(a)	Toxicity to Estuarine and Marine Organisms (in Fish)
72-3(b)	Toxicity to Estuarine and Marine Organisms (in Mollusks)
72-3(c)	Toxicity to Estuarine and Marine Organisms (in Shrimp)
72-3(d)	Toxicity to Estuarine and Marine Organisms (in Fish - Using Typical End-Use Product)
72-3(e)	Toxicity to Estuarine and Marine Organisms (in Mollusks - Using Typical End-Use Product)
72-3(f)	Toxicity to Estuarine and Marine Organisms (in Shrimp - Using Typical End-Use Product)
72-4(a)	Early Life Stage in Fish
72-4(b)	Life Cycle in Aquatic Invertebrates (*Daphnia*/Mysid)
72-5	Fish Life Cycle Study
72-6	Aquatic Organism Accumulation Study
72-7(a)	Simulated Field Tests for Aquatic Organisms
72-7(b)	Actual Field Tests for Aquatic Organisms
Toxicology Data Requirements[9].	
81-1	Acute Oral Toxicity in the Rat
81-2	Acute Dermal Toxicity
81-3	Acute Inhalation Toxicity in the Rat
81-4	Primary Eye Irritation in the Rabbit
81-5	Primary Dermal Irritation
81-6	Dermal Sensitization
81-7	Acute Delayed Neurotoxicity in the Hen
82-1(a)	90-Day Feeding Study in the Rodent
82-1(b)	90-Day Feeding Study in the Non-Rodent
82-2	21-Day Dermal
82-3	90-Day Subchronic Dermal
82-4	90-Day Inhalation in Rat
82-5(a)	90-Day Neurotoxicity in Hen
82-5(b)	90-Day Neurotoxicity in the Mammal (Rat Preferred)
83-1(a)	Chronic Feeding Study in the Rodent
83-1(b)	Chronic Feeding Study in the Non-Rodent
83-2(a)	Oncogenicity Study in the Rat
83-2(b)	Oncogenicity Study in the Mouse
83-3(a)	Teratogenicity in the Rat
83-3(b)	Teratogenicity in the Rabbit
83-4	2-Generation Reproduction Study in the Rat
83-5	Chronic Feeding/Oncogenicity in the Rat
84-2(a)	Gene Mutation
84-2(b)	Structural Chromosome Aberration
84-4	Other Genotoxic Effects
85-1	General Metabolism
85-2	Dermal Penetration
86-1	Domestic Animal Safety
Plant Protection Data Requirements[10].	
Tier 1	
122-1(a)	Seed Germination and Seedling Emergence
122-1(b)	Vegetative Vigor
122-2	Aquatic Plant Growth
Tier 2	
123-1(a)	Seed Germination and Seedling Emergence
123-1(b)	Vegetative Vigor
123-2	Aquatic Plant Growth
Tier 3	
124-1	Terrestrial Field
124-2	Aquatic Field
Reentry Protection Data Requirements[11].	
132-1(a)	Foliar Residue Dissipation
132-1(b)	Soil Residue Dissipation
133-3	Dermal Passive Dosimetry Exposure
133-4	Inhalation Passive Dosimetry Exposure
Non-Target Insect Data Requirements[12].	
141-1	Honey Bee Acute Contact (LD50)
141-2	Honey Bee Toxicity of Residues on Foliage

TABLE 1.—STUDY TITLES AND GUIDELINE REFERENCE NUMBERS OF REREGISTRATION DATA REQUIREMENTS—Continued

Guideline Reference No.	Test or Study
141-5	Field Testing for Pollinators
Biochemical Pesticides Data Requirements[13].	
(a) Product Analysis Data Requirements.	
151-10	Product Identity
151-11	Manufacturing Process
151-12	Discussion of Formation of Unintentional Ingredients
151-13	Analysis of Samples
151-15	Certification of Limits
151-16	Analytical Methods
151-17(a)	Color
151-17(b)	Physical State
151-17(c)	Odor
151-17(d)	Melting Point
151-17(e)	Boiling Point
151-17(f)	Density, Bulk Density, Specific Gravity
151-17(g)	Solubility
151-17(h)	Vapor Pressure
151-17(i)	pH
151-17(j)	Stability
151-17(k)	Flammability
151-17(l)	Storage Stability
151-17(m)	Viscosity
151-17(n)	Miscibility
151-17(o)	Corrosion Characteristics
151-17(p)	Octanol/Water Partition Coefficient
151-18	Submittal of Samples
(b) Residue Data Requirements.	
153-3(a)	Chemical Identity
153-3(b)	Directions for Use
153-3(c)	Nature of the Residue (plants)
153-3(d)	Nature of the Residue (livestock)
153-3(e)	Residue Analytical Method
153-3(f)	Magnitude of the Residue (crop field trials)
153-3(g)	Magnitude of the Residue (processed food/feed)
153-3(h)	Magnitude of the Residue (meat/milk/poultry/eggs)
153-3(i)	Magnitude of the Residue (potable water)
153-3(j)	Magnitude of the Residue (fish)
153-3(k)	Magnitude of the Residue (irrigated crops)
153-3(l)	Magnitude of the Residue (food handling)
153-3(m)	Reduction of Residue
153-3(n)	Proposed Tolerance
153-3(o)	Reasonable Grounds in Support of the Petition
(c) Toxicology Data Requirements.	
Tier 1	
152-10	Acute Oral Toxicity
152-11	Acute Dermal Toxicity
152-12	Acute Inhalation
152-13	Primary Eye Irritation
152-14	Primary Dermal Irritation
152-15	Hypersensitivity Study
152-16	Hypersensitivity Incidents
152-17	Studies to Detect Genotoxicity
152-18	Immunotoxicity
152-20	90-Day Feeding
152-21	90-Day Dermal
152-22	90-Day Inhalation
152-23	Teratogenicity
Tier II	
152-19	Mammalian Mutagenicity Tests
152-24	Immune Response
Tier III	
152-26	Chronic Exposure
152-29	Oncogenicity
(d) Nontarget Organism, Fate and Expression Data Requirements.	
Tier I	
154-6	Avian Acute Oral
154-7	Avian Dietary
154-8	Freshwater Fish LC50
154-9	Freshwater Invertebrate LC50
154-10	Nontarget Plant Studies
154-11	Nontarget Insect Testing
Tier II	
155-4(a)	Volatility Study (Lab)
155-4(b)	Volatility Study (Field)
155-5	Dispenser-Water Leaching
155-6	Adsorption-Desorption

TABLE 1.—STUDY TITLES AND GUIDELINE REFERENCE NUMBERS OF REREGISTRATION DATA REQUIREMENTS—Continued

Guideline Reference No.	Test or Study
155-7	Octanol-Water Partition
155-8	U.V. Absorption
155-9	Hydrolysis
155-10	Aerobic Soil Metabolism
155-11	Aerobic Aquatic Metabolism
155-12	Soil Photolysis
155-13	Aquatic Photolysis
Tier III	
154-12	Terrestrial Wildlife Testing
154-13	Aquatic Animal Testing
154-14	Nontarget Plant Studies
154-15	Nontarget Insect Testing
Environmental Fate Data Requirements[14].	
160-5	Chemical Identity (See also 61-1)
161-1	Hydrolysis
161-2	Photodegradation in Water
161-3	Photodegradation on Soil
161-4	Photodegradation in Air
162-1	Aerobic Soil Metabolism Study
162-2	Anaerobic Soil Metabolism Study
162-3	Anaerobic Aquatic Metabolism Study
162-4	Aerobic Aquatic Metabolism Study
163-1	Leaching and Adsorption/Desorption
163-2	Laboratory Volatility Study
163-3	Field Volatility Study
164-1	Soil Field Dissipation Study
164-2	Aquatic Sediment Field Dissipation Study
164-3	Forestry Field Dissipation Study
164-4	Combinations and Tank Mixes
164-5	Long Term Soil Dissipation Study
165-1	Confined Rotational Crop Study
165-2	Field Rotational Crop Study
165-3	Accumulation in Irrigated Crops
165-4	Accumulation in Fish
165-5	Accumulation in Aquatic Non-Target Organisms
Groundwater Studies Data Requirements[15].	
166-1	Small Scale Prospective Groundwater Monitoring Study
166-2	Small Scale Retrospective Groundwater Monitoring Study
166-3	Large Scale Retrospective Groundwater Monitoring Study
Residual Chemistry Data Requirements[16].	
171-2	Chemical Identity
171-3	Directions For Use
171-4(a)	Nature of Residue in Plants
171-4(b)	Nature of Residue in Livestock
171-4(c)	Residue Analytical Method (Plants)
171-4(d)	Residue Analytical Method (Animals)
171-4(e)	Storage Stability
171-4(f)	Magnitude of the Residue in Potable Water
171-4(g)	Magnitude of the Residue in Fish
171-4(h)	Magnitude of the Residue in Irrigated Crops
171-4(i)	Magnitude of the Residue in Food Handling
171-4(j)	Magnitude of the Residue in Meat/Milk/Poultry/Eggs (Feeding/Dermal Treatment)
171-4(k)	Crop Field Trials
171-4(l)	Magnitude of the Residue in Processed Food/Feed
171-5	Reduction of Residues
171-6	Proposed Tolerance
171-7	Reasonable Grounds in Support of Petition
171-13	Analytical Reference Standard
Spray Drift Data Requirements[17].	
201-1	Droplet Size Spectrum
202-1	Drift Field Evaluation

[1] 40 CFR 158.155: Product Composition; Subdivision D, Product Chemistry: NTIS PB83-153890; Addendum 1, NTIS PB88-191705

[2] 40 CFR 158.160: Description of Materials Used to Produce the Product; 40 CFR 158.162: Description of Production Process; 40 CFR 158.165: Description of Formulation Process; Subdivision D, Product Chemistry: NTIS PB83-153890; Addendum 1, NTIS PB88-191705.

[3] 40 CFR 158.167: Discussion of Formation of Impurities; Subdivision D, Product Chemistry: NTIS PB83-153890; Addendum 1, NTIS PB88-191705.

[4] 40 CFR 158.170: Preliminary Analysis; Subdivision D, Product Chemistry: NTIS PB 83-153890; Addendum 1, NTIS PB88-191705.

[5] 40 CFR 158.175: Certified Limits; Subdivision D, Product Chemistry: NTIS PB83-153890; Addendum 1, NTIS PB88-191705.

[6] 40 CFR 158.180: Enforcement Analytical Method; Subdivision D, Product Chemistry: NTIS PB83-153890; Addendum 1, NTIS PB88-191705.

[7] 40 CFR 158.190: Physical and Chemical Characteristics; Subdivision D, Product Chemistry: NTIS PB83-153890; Addendum 1, NTIS PB88-191705.

[8] 40 CFR 158.490; Subdivision E, Hazard Evaluation: Wildlife and Aquatic Organisms, NTIS PB83-153908; Addendum 1, NTIS PB86-248176; Addendum 2, PB87-207700; Addendum 3, NTIS PB88-117288.

[9] 40 CFR 158.340; Subdivision F, Hazard Evaluation: Human and Domestic Animals, NTIS PB83-153916 (old); NTIS PB86-108958 (revised); Addendum 1, NTIS PB86-248184; Addendum 2, NTIS PB88-162292; Addendum 3, NTIS PB88-161179; Addendum 4, NTIS PB88-162227; Addendum 5, NTIS PB88-162219; Addendum 6, NTIS PB89-124077; Addendum 7, NTIS PB89-124085; Position Document, Maximum Tolerated Dose, NTIS PB88-116736.

[10] 40 CFR 158.540; Subdivision J, Hazard Evaluation: Non-Target Plants, NTIS PB83-153940.

[11] 40 CFR 158.390: Exposure; Subdivision K, Reentry Protection: NTIS PB83-153940.

[12] 40 CFR 158.590; Subdivision L, Hazard Evaluation: Non-Target Insect, NTIS PB83-153957; Addendum 1, NTIS PB88-117296.

[13] 40 CFR 158.690: Biochemical Pesticides Data Requirements; Subdivision M, Biorational Pesticides: NTIS PB83-153965.
[14] 40 CFR 158.290; Subdivision N, Chemistry: Environmental Fate, NTIS PB83-153973; Addendum 1, NTIS PB86-247848; Addendum 2, NTIS PB87-208393; Addendum 3, NTIS PB88-159892; Addendum 4, NTIS PB88-159900; Addendum 5, NTIS PB88-161187; Addendum 6, NTIS PB88-161195; Addendum 7, NTIS PB88-191721; Addendum 8, NTIS PB88-191739.
[15] Pesticide Assessment Guidelines for groundwater studies are being developed; for further information, contact EPA's Office of Pesticide Programs, Environmental Fate and Effects Division, Environmental Fate and Groundwater Branch.
[16] 40 CFR 158.240; Subdivision O, Residue Chemistry: NTIS PB83-153961; Addendum 1, NTIS PB86-203734; Addendum 2, NTIS PB86-248192; Addendum 3, NTIS PB87-208641; Addendum 4, NTIS PB88-117270; Addendum 5, NTIS PB88-124003; Addendum 6, NTIS PB88-191713; Addendum 7, NTIS PB89-124598; Addendum 8, NTIS PB89-124606.
[17] 40 CFR 158.440; Subdivision R, Pesticide Spray Drift Evaluation: NTIS PB84-189216.

For further information and descriptions regarding specific data requirements, criteria for testing, and general guidance on data acceptability, consult the FIFRA Accelerated Reregistration—Phase 3 Technical Guidance document (December 24, 1989), and the Pesticide Assessment Guidelines available from the National Technical Information Service (NTIS), Attn: Order Desk, 5285 Port Royal Road, Springfield, VA 22161 (Tel: 703-487-4650).

III. Partial Listing of List B Active Ingredients Outstanding Data Requirements

The pesticide reregistration effort under section 4 has proved to be a monumental undertaking requiring significant effort and resources from both the Agency and the pesticide industry. The Agency received approximately 200 List B Phase 3 submissions for review of data requirements under Phase 4. The amount of data submitted by registrants was voluminous, and differed widely by active ingredient, the number of registrants supporting an ingredient, and the number and type of summaries and reformatted studies. In total this group of submissions contained some 5000 summaries, reformatted studies, and complete studies, and a similar number of study waiver requests that had to be reviewed and acted upon by the Agency.

For a variety of reasons EPA's issuance of the reregistration data requirements for active ingredients on List B was delayed beyond the statutory deadline of October 24, 1990. To fulfill its commitments in Phase 4 the Agency decided to publish a series of **Federal Register** notices and issue Data Call-In notices for groups of active ingredients as their outstanding data requirements are identified. The first **Federal Register** notice which contained 10 List B active ingredients and their outstanding data requirements was published on February 20, 1991. The second Notice, published on August 7, 1991, listed 30 more active ingredients from List B and their associated outstanding data requirements. This third Notice contains 35 additional active ingredients and their unfulfilled data requirements.

The 149 List B cases involving 229 active ingredients, originally published in the **Federal Register** in May 1989, have been reduced to 105 cases and 141 active ingredients as of this date. Of these, 130 active ingredients in 102 cases are presently on the Phase 4 reregistration schedule. An additional 11 active ingredients in 7 cases previously unsupported in Phase 2 are now supported, and will be on a later reregistration schedule. Products containing the 88 unsupported active ingredients have been cancelled.

The following Table 2 contains 35 List B active ingredients with data requirements that are unfulfilled by registrants at this time.

TABLE 2.—OUTSTANDING DATA REQUIREMENTS FOR LIST B ACTIVE INGREDIENTS

Case No.	Chemical No.	Chemical Name	Outstanding Data Requirements(By Guideline No.)
2010	080801	2-(Ethylamino)-4-(isopropylamino)-6-(methylthio)-*s*-triazine	61-2(a), 62-3, 63-13, 72-1(a), 72-1(c), 72-3(b), 72-4(a), 72-4(b), 81-3, 81-8*, 82-1(a), 82-1(b), 82-7*, 83-1(a), 83-1(b), 83-2(a), 83-2(b), 162-3, 163-1, 165-1, 165-4, 166-1, 171-4(a), 171-4(c), 171-4(d), 171-4(e), 171-4(j), 171-4(k), 171-4(l), 202-1
2045	062201	2-Benzyl-4-chlorophenol	61-1, 61-2(a), 61-2(b), 62-1, 62-2, 62-3, 63-2, 63-3, 63-4, 63-5, 63-6, 63-7, 63-8, 63-9, 63-10, 63-11, 63-12, 63-13, 160-5, 171-2
2065	101401	beta-Bromo-beta-nitrostyrene	62-1, 62-2, 63-7, 63-9, 72-1(b), 72-1(d), 72-2(b), 72-3(d), 72-3(e), 72-3(f), 72-4(a), 72-4(b), 81-3, 122-2, 161-1, 161-2, 162-1, 164-2, 165-3, 165-4
2115	019401	4-Chlorophenoxyacetic acid	61-2(a), 61-2(b), 62-1, 62-2, 62-3, 63-4, 63-7, 63-9, 63-10, 63-11, 63-12, 71-1(a), 71-2(a), 71-2(b), 72-1(a), 72-1(c), 72-2(a), 81-2, 81-3, 81-4, 81-5, 81-6, 82-1(a), 82-1(b), 83-3(a), 122-1(a), 122-1(b), 122-2, 160-5, 161-1, 161-3, 162-1, 163-1, 163-2, 164-1, 171-2, 171-4(a),171-4(b),171-4(c),171-4(d), 171-4(e),171-4(j),171-4(k),171-4(l)

TABLE 2.—OUTSTANDING DATA REQUIREMENTS FOR LIST B ACTIVE INGREDIENTS—Continued

Case No.	Chemical No.	Chemical Name	Outstanding Data Requirements(By Guideline No.)
2130	109702	Cyano (3-phenoxyphenyl)methyl 3-(2,2-dichlorethenyl)-2,2-dimethylcyclopropanecarboxylate.	61-2(a), 61-2(b), 62-1, 62-2, 62-3, 63-2, 63-3, 63-4, 63-5, 63-6, 63-7, 63-8, 63-9, 63-10, 63-11, 63-13, 72-4(b), 72-6, 72-7(a), 81-3, 81-8*, 82-1(b), 82-4, 82-7*, 83-1(b), 83-2(a), 83-3(a), 83-3(b), 83-4, 84-4, 86-1, 141-2, 161-2, 161-3, 162-1, 162-2, 163-1, 164-1, 165-1, 165-4, 171-4(a),171-4(b),171-4(d),171-4(e), 171-4(i), 171-4(j),171-4(k),171-4(l), 202-1
2135	035602	Tetrahydro-3,5-dimethyl-2*H*-1,3,5-thiadiazine-2-thione	61-1, 61-2(a), 61-2(b), 63-8, 63-9, 71-1(a), 71-2(a), 71-4(a), 71-4(b), 72-1(a), 72-1(b), 72-1(c), 72-1(d), 72-2(a), 72-2(b), 72-3(a), 72-3(b), 72-3(c), 72-3(d), 72-3(e), 72-3(f), 72-4(a), 72-4(b), 72-7(b), 81-2, 83-1(b), 83-2(b), 122-2, 132-1(a), 132-1(b), 133-3, 133-4, 141-1, 160-5, 161-1, 161-2, 161-3, 162-3, 162-4, 163-1, 163-2, 164-2, 164-3, 165-1, 165-4, 171-2
2135	035607	Sodium tetrahydro-3,5-dimethyl-2*H*-1,3,5-thiadiazine-2-thione	61-1, 61-2(a), 61-2(b), 62-1, 62-2, 62-3, 63-8, 63-9, 71-1(a), 71-2(a), 71-4(a), 71-4(b), 72-1(a), 72-1(b), 72-1(c), 72-1(d), 72-2(a), 72-2(b), 72-3(a), 72-3(b), 72-3(c), 72-3(d), 72-3(e), 72-3(f), 72-4(a), 72-4(b), 72-7(b), 83-1(b), 83-2(b), 122-2, 133-3, 133-4, 160-5, 161-1, 161-2, 162-3, 162-4, 163-1, 163-2, 164-2, 171-2
2150	104801	Ethyl meta-hydroxycarbanilate carbanilate	61-2(a), 63-11, 63-13, 81-3, 82-2, 83-2(b), 83-3(b), 85-1, 123-1(a), 123-1(b), 123-2, 132-1(a), 132-1(b), 133-3, 161-1, 161-2, 161-3, 162-1, 162-3, 163-1, 164-1, 165-1, 165-4, 171-4(b), 171-4(c), 171-4(d), 171-4(j), 171-4(l)
2215	047201	Di-*n*-propyl isocinchomeronate	61-2(b), 62-3, 63-10, 72-1(a), 72-1(c), 82-2, 82-3, 82-4, 83-1(a), 83-1(b), 83-2(a), 83-2(b), 83-3(a), 85-1, 85-2, 160-5, 161-1, 161-2, 161-3, 162-1, 162-2, 162-3, 162-4, 163-1, 164-1, 171-2
2265	110601	2-Ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate	62-1, 62-2, 62-3, 71-2(a), 71-2(b), 72-1(a), 72-1(c), 72-2(a), 72-3(a), 72-3(b), 72-3(c), 72-4(a), 72-6, 81-3, 81-4, 81-5, 82-2, 83-2(a), 83-2(b), 83-3(a), 85-1, 141-1, 161-2, 162-1, 162-2, 162-3, 163-1, 164-1, 165-1, 165-2, 165-4, 171-4(a), 171-4(b),171-4(e),171-4(j), 171-4(k), 171-4(l)
2275	042301	Ethylene oxide	61-1, 61-2(a), 62-1, 62-2, 62-3, 63-8, 63-9, 63-11, 63-13, 81-8*, 82-7*, 83-1(a), 83-4, 85-1, 133-4, 171-4(a), 171-4(c), 171-4(e), 171-4(l), 171-5, 232-x*, 234-x*
2295	109302	*N*-[2-Chloro-4-(trifluoromethyl)phenyl]-DL-valine,(±)-cyano(3-phenoxyphenyl)methyl ester.	72-3(d), 72-3(e), 72-3(f), 72-5, 72-7(b), 81-6, 85-1, 162-3

TABLE 2.—OUTSTANDING DATA REQUIREMENTS FOR LIST B ACTIVE INGREDIENTS—Continued

Case No.	Chemical No.	Chemical Name	Outstanding Data Requirements(By Guideline No.)
2315	043901	Glutaraldehyde	61-1, 61-2(a), 61-2(b), 62-1, 62-2, 62-3, 63-8, 63-9, 63-10, 63-11, 63-13, 71-1(a), 71-2(a), 71-2(b), 72-1(a), 72-1(b), 72-1(c), 72-1(d), 72-2(a), 72-2(b), 72-3(a), 72-3(b), 72-3(c), 72-3(d), 72-3(e), 72-3(f), 72-4(a), 72-4(b), 81-3, 82-3, 82-4, 83-1(a), 83-1(b), 83-2(a), 83-2(b), 83-3(a) 83-3(b), 83-4, 85-1, 161-1, 161-2, 162-3, 162-4, 163-1, 164-2, 165-4, 171-4(i), 171-4(j)
2340	054901	5-Chloro-2-(2,4-dichlorophenoxy)phenol	61-1, 61-2(a), 61-2(b), 62-1, 62-3, 63-2, 63-3, 63-4, 63-5, 63-7, 63-8, 63-9, 63-13, 71-1(a), 71-2(a), 72-1(c), 72-2(a), 81-1, 81-3, 81-5, 81-6, 82-3, 83-1(a), 83-2(a), 83-2(b), 83-3(a), 83-3(b), 84-2(a), 84-2(b), 84-4, 160-5, 161-1, 161-2, 171-2
2345	109401	Isopropylsalicylate, *O*-ester with *O*-ethylisopropylphosphoramidothioate	63-8, 71-4(a), 71-4(b), 72-3(a), 81-2, 81-6, 82-2, 83-3(a), 83-3(b), 85-1, 81-8*, 82-7*, 85-4*, 132-1(a), 133-3, 133-4, 141-1, 162-1, 162-2, 162-3, 163-1, 164-1, 165-1, 201-1, 202-1, 231-x*, 232-x*
2355	106701	Ammonium ethyl carbamoylphosphonate	71-4(a), 71-4(b), 72-3(a), 72-3(b), 72-3(c), 72-4(a), 72-4(b), 81-7, 82-1(b), 83-3(a), 84-2(a), 81-8*, 82-7*, 85-4*, 122-2, 162-3, 162-4, 163-1, 163-2, 164-1, 164-3, 165-1, 165-4, 201-1, 202-1, 231-x*, 232-x*
2405	068103	Methyl isothiocyanate	61-1, 61-2(a), 61-2(b), 63-7, 63-12, 72-1(a), 72-1(c), 81-2, 81-3, 81-4, 81-6, 82-4, 83-1(a), 83-2(a), 83-2(b), 83-3(a), 83-3(b), 83-4, 84-2(a), 85-1, 122-1(a), 122-1(b), 122-2, 132-1(b), 133-4, 160-5, 161-1, 161-2, 161-4, 162-2, 162-3, 163-1, 163-2, 164-1, 164-5, 165-1, 165-4, 171-4(a), 171-4(c), 171-4(e), 171-4(k), 171-4(l), 231-x*, 232-x*, 233-x*, 234-x*
2415	068102	Methylene-bis(thiocyanate)	71-1(a), 71-2(a), 71-2(b), 72-3(a), 72-3(b), 72-3(c), 72-4(a), 72-4(b), 81-2, 81-3, 82-1(a), 82-4, 83-1(a), 83-2(a), 83-2(b), 83-3(a), 83-4, 123-2, 133-4, 161-2, 161-3, 162-1, 162-3, 162-4, 164-1, 164-2, 201-1, 202-1
2435	041402	*S*-Ethyl hexahydro-1*H*-azepine-1-carbothioate	61-2(a), 72-1(a), 72-1(c), 72-2(a), 72-3(a), 72-3(b), 72-3(c), 81-8*, 82-7*, 161-3, 171-3,171-4(b), 171-4(c),171-4(d),171-4(f), 171-4(k), 201-1,202-1,231-x*,232-x*
2485	109001	2-tert-Butyl-4-(2,4-dichloro-5-isopropoxyphenyl)-delta 2-1,3,4-oxadiazoline-5-one	62-1, 62-2, 62-3, 63-8, 63-9, 63-11, 63-13, 71-4(a), 71-4(b), 72-1(a), 72-1(c), 72-2(a), 72-3(a), 72-3(b), 72-3(c), 72-5, 81-1, 81-2, 81-3, 81-4, 81-5, 82-2, 84-2(a), 85-1, 122-1(a),122-1(b),132-1(a),132-1(b), 133-3,133-4, 141-1, 161-1, 161-2, 161-3, 162-1, 162-2, 162-3, 162-4, 163-1, 164-1, 165-1, 165-4, 231-x*, 232-x*

TABLE 2.—OUTSTANDING DATA REQUIREMENTS FOR LIST B ACTIVE INGREDIENTS—Continued

Case No.	Chemical No.	Chemical Name	Outstanding Data Requirements(By Guideline No.)
2535	108102	*O*-[2-(Diethylamino)-6-methyl-4-pyrimidinyl] *O,O*-dimethyl phosphorothioate	71-1(a), 71-2, 71-2(a), 81-1, 81-2, 81-4, 81-5, 81-6, 81-8*, 82-7*, 83-2(b), 83-3(b), 83-4, 84-2(b), 84-4, 161-1, 171-4(a),171-4(b),171-4(d), 171-4(e), 171-4(j),171-4(k),171-4(l)
2545	080804	2,4-Bis(isopropylamino)-6-methoxy-*s*-triazine	63-10, 71-4(a), 71-4(b), 81-1, 81-3, 84-2(a), 84-2(b), 84-4, 85-1, 162-1, 162-2, 166-1
2550	113601	1-Methylethyl (*E*)-3-(((ethylamino)methoxyphosphinothioyl)oxy)-2-butanoate	61-1, 61-2(a), 62-1, 62-3, 63-10, 63-11, 63-13, 71-2(b), 81-8*, 82-2, 82-7*, 83-1(a), 83-2(a), 83-4, 85-1, 85-4*, 133-3, 160-5, 161-1, 162-1, 171-2,171-3,171-4(a),171-4(b), 171-4(c), 171-4(d),171-4(e),171-4(i), 171-4(j)
2585	118401	(Tetrahydro-5,5-dimethyl-2(1*H*)-pyrimidinone) (1,5-bis(a,a,a-trifuoro-p-tolyl)-1,4-pentadien-3-one)hydrazone.	63-7, 63-8, 63-10, 63-11, 63-13, 81-3, 83-4, 85-1, 160-5, 161-1, 161-2, 161-3, 162-1, 162-3, 164-1, 171-2, 171-4(a),171-4(b),171-4(c),171-4(e), 171-4(j), 171-4(k), 231-x*, 232-x*
2600	121001	2-(1-(Ethoxyimino)butyl)-5-(2-(ethylthio)propyl)-3-hydroxy-2-cyclohexen-1-one	72-3(a), 72-3(b), 72-3(c), 72-3(d), 72-3(e), 72-3(f), 72-6, 81-4, 81-5, 81-6, 82-2, 83-2(a), 83-3(a), 83-3(b), 165-4, 171-4(a), 171-4(b),171-4(c),171-4(d),171-4(e), 171-4(j), 171-4(k), 171-4(l)
2660	069003	(1-Cyclohexene-1,2,-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate.	62-1, 63-6, 63-7, 63-8, 63-9, 63-11, 63-12, 63-13, 81-8*, 82-2, 82-4, 82-7*, 83-1(b), 83-3(a), 83-4, 85-1, 141-2, 161-1, 161-2, 162-1, 163-1, 163-2, 164-1, 165-4, 201-1, 202-1
2675	114501	Dimethyl *N,N'*-(thiobis[(methylimino)carbonyloxy))bis(ethanimidothioate)	63-7, 72-4(a), 72-4(b), 83-1(a), 83-2(a), 83-2(b), 83-4, 85-1, 123-1(a), 123-1(b), 123-2, 133-4, 141-1, 161-1, 161-2, 161-3, 162-1, 162-3, 162-4, 163-1, 163-2, 164-1, 164-2, 164-3, 165-1, 165-2, 165-4, 171-4(a), 171-4(b),171-4(c),171-4(e),171-4(j), 171-4(k), 171-4(l), 171-6, 171-7, 201-1, 202-1, 232-x*, 234-x*
2680	102001	Dimethyl ((1,2-phenylene)bis(iminocarbonothioyl))bis(carbamate)	71-4(a), 71-4(b), 72-1(c), 72-2(a), 72-3(a), 72-3(b), 72-3(c), 82-1(a), 82-1(b), 82-2, 83-1(a), 83-1(b), 83-2(a), 83-2(b), 83-4, 85-1, 122-1(a), 122-1(b), 122-2, 161-3, 164-1, 165-1, 165-4, 171-4(a), 171-4(b),171-4(c),171-4(d),171-4(e), 171-4(j), 171-4(k), 171-4(l), 171-7, 171-13
2695	078802	*S*-(2,3,3-Trichloroallyl) diisopropylthiocarbamate	61-2(a), 62-3, 63-8, 63-10, 72-4(a), 72-4(b), 81-2, 81-8*, 82-2, 82-5(b), 123-1(a), 123-1(b), 141-1, 161-1, 161-2, 161-3, 163-2, 165-1, 171-4(a), 171-4(b), 171-4(c),171-4(e),171-4(k),171-4(l)

TABLE 2.—OUTSTANDING DATA REQUIREMENTS FOR LIST B ACTIVE INGREDIENTS—Continued

Case No.	Chemical No.	Chemical Name	Outstanding Data Requirements(By Guideline No.)
2720	107901	*N,N'*-(1,4-Piperazinediyl-bis(2,2,2-trichloroethylidine))bis(formamide)	61-1, 61-2(a), 61-2(b), 62-2, 62-3, 63-2, 63-3, 63-4, 63-5, 63-6, 63-7, 63-8, 63-9, 63-10, 63-11, 63-12, 63-13, 71-1(a), 71-2(a), 71-2(b), 71-4(a), 71-4(b), 72-1(a), 72-1(c), 72-2(a), 81-1, 81-2, 81-3, 81-4, 81-5, 81-6, 83-1(a), 83-1(b), 83-2(a), 83-2(b), 83-3(a), 83-3(b), 83-4, 84-2(a), 84-2(b), 84-4, 85-1, 141-1, 160-5, 161-1, 161-2, 161-3, 162-1, 162-2, 162-3, 163-1, 163-2, 164-1, 165-1, 165-4, 171-2, 171-4(a),171-4(b),171-4(c),171-4(e), 171-4(j), 171-4(k), 171-4(l), 201-1, 202-1
2725	107601	3-Iodo-2-propynyl butylcarbamate	61-2(a), 61-2(b), 63-9, 63-12, 71-1(a), 71-2(a), 71-2(b), 72-3(a), 72-3(b), 72-3(c), 72-4(a), 72-4(b), 81-2, 81-3, 82-1(a), 82-3, 83-1(a), 83-2(a), 83-2(b), 83-3(a), 83-3(b), 84-2(a), 85-1, 161-1, 162-1, 162-2, 163-1, GLN-x*
2770	216400	2-Bromo-2-nitropropane-1,3-diol	61-2(a), 72-4(a), 85-1, 161-2
2780	111001	1-Bromo-1-(bromomethyl)-1,3-propanedicarbonitrile	61-1, 61-2(a), 61-2(b), 62-1, 62-2, 62-3, 63-2, 63-3, 63-4, 63-5, 63-6, 63-7, 63-8, 63-9, 63-10, 63-11, 63-12, 63-13, 71-2(b), 72-1(b), 72-1(d), 72-2(b), 72-4(a), 72-5, 81-3, 81-4, 82-1(b), 82-2, 161-1, 161-2, 162-3, 164-2, 165-4, 234-x*
2810	067703	2-Pivalyl-1,3-indandione	63-2, 63-3, 63-4, 63-5, 63-7, 63-8, 63-9, 63-10, 63-11, 63-12, 63-13, 71-1(a), 71-2(a), 71-2(b), 72-1(a), 72-1(c), 72-2(a), 81-1, 81-2, 81-3, 81-4, 81-5, 81-6, 82-1(a), 82-1(b), 82-2, 83-3(a), 84-2(a), 84-2(b), 84-4, 85-1, 86-1, 161-1, 161-2, 162-1, 162-4, 163-1, 164-1, 164-2, 165-3, 165-4, 171-3
2810	067704	Sodium 2-pivalyl-1,3-indandione	63-2, 63-3, 63-4, 63-5, 63-7, 63-8, 63-9, 63-10, 63-11, 63-12, 63-13, 71-1(a), 71-2(a), 71-2(b), 72-1(a), 72-1(c), 72-2(a), 81-1, 81-2, 81-3, 81-4, 81-5, 81-6, 82-1(a), 82-1(b), 82-2, 83-3(a), 84-2(a), 84-2(b), 84-4, 85-1, 86-1, 171-3

KEY: * Special Studies; Guidelines for the following studies are presently being developed (for more information, contact the person named in the Notice):

81-8 Acute Neurotoxocity Screening-Rat.
82-7 90-Day Neurotoxocity Screening-Rat.
85-4 Ocular Toxicity Study-Dog.
231-x Estimation of Dermal Exposure, Outdoor Sites.
232-x Estimation of Respiratory Exposure, Outdoor Sites.
233-x Estimation of Dermal Exposure, Indoor Sites.
234-x Estimation of Respiratory Exposure, Indoor Sites.
GLN-x Environmental Availability Testing, no guideline numbers have yet been assigned.

This list contains 35 currently supported active ingredients reviewed during Phase 4 of reregistration and their outstanding data requirements identified as Guideline Reference Numbers. In a number of instances, registrants have already committed to satisfy many of these requirements, with the remaining requirements being subject to the recently issued Data Call-In notices. Of these, some may have been partially satisfied by studies that can be upgraded or supplemented with additional data. The data needs for specific crops are not presented here; instead the overall Guideline Reference Number is listed if any crop specific data are outstanding, even though some individual crop data requirements under it may be in fact satisfied.

IV. Phase 4 List B Data Call-In Notices

Under FIFRA section 3(c)(2)(B) the Agency has issued to affected registrants Phase 4 List B Data Call-In notices for the outstanding data requirements that registrants have not previously committed to satisfy for the active ingredients listed on Table 2 of this Notice. Registrants with unfilled data requirements for their active

ingredients must respond to the Agency within 90 days of receipt of their Data Call-In Notice to express their intent to satisfy the remaining data requirements. The data requirements identified in the Data Call-In notices must be submitted within the time schedule specified in them. Additional Data Call-In notices for the remaining List B chemicals not covered by this followup Notice will be sent to the affected registrants, coinciding with the publication of one or more additional **Federal Register** notices in the next several months.

Dated: September 27, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-25176 Filed 10-22-91; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4023-5]

Kalama Specialty Chemical Site: Notice of Proposed Settlement

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for past response costs at the Kalama Specialty Chemical Site, Beaufort, South Carolina with Kalama Specialty Chemical, Inc. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate.

DATES: Written comments may be submitted to EPA by November 22, 1991.

ADDRESSES: Copies of the proposed settlement are available from the address below. Ccmments should be sent to the same address. Ms. Carolyn McCall, Investigation Support Assistant, Cost Recovery Section, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, Georgia 30365, (404) 347-5059.

Dated: October 3, 1991.

Richard D. Green,

Associate Director, Waste Management Division, EPA Region IV.

[FR Doc. 91-25424 Filed 10-22-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59918; FRL 4000-9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 23 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92-1, 92-2, 92-3, October 21, 1991.

Y 92-4, 92-5, October 28, 1991.

Y 92-6, 92-7, October 27, 1991.

Y 92-8, 92-9, 92-10, 92-11, 92-12, 92-13, 92-14, 92-15, October 29, 1991.

Y 92-16, 92-17, 92-18, 92-22, 92-23, 92-24, 92-25, 92-26, October 31, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92-1

Manufacturer. U.S. Polymers Inc.

Chemical. (S) Tall oil fatty acids; sorbitol; glycerine; phthalicanhydrie; maleic anhydride.

Use/Production. (S) Resin for architectual enamels. Prod. range: 250,000-300,000 kg/yr.

Y 92-2

Manufacturer. U.S. Polymers Inc.

Chemical. (S) Tall oil fatty acids; distilled tall oil sylvatol; sorbitol; glycerine; mono pentaerythritol; phthalic anhydride; maleic anhydride.

Use/Production. (S) Resin for architectual enamels. Prod. range: 250,000-300,000 kg/yr.

Y 92-3

Manufacturer. U.S. Polymers Inc.

Chemical. (S) Trimethylpentanediol; diethylene glycol; polyethylenetere phthalate; phthalic anhydride; tall oil fatty acids.

Use/Production. (S) Resin used in baking enamel. Prod. range: 20,000-30,000 kg/yr.

Y 92-4

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Paint. Prod. range: Confidential.

Y 92-5

Manufacturer. Confidential.

Chemical. (G) Styrenated acrylic copolymer.

Use/Production. (S) Thermoset productive coating. Prod. range: 11,523-23,045 kg/yr.

Y 92-6

Manufacturer. Franklin International.

Chemical. (G) Mixed acrylate copolymer.

Use/Production. (S) Pressure-sensitive adhesive. Prod. range: 25,000-450,000 kg/yr.

Y 92-7

Manufacturer. Confidential.

Chemical. (G) Aqueous acrylic polymer salts.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 92-8

Manufacturer. Confidential.

Chemical. (G) Aqueous acrylic polymer salts.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 92-9

Manufacturer. Confidential.

Chemical. (G) Aqueous acrylic polymer salts.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 92-10

Manufacturer. Confidential.

Chemical. (G) Aqueous acrylic polymer salts.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential

Y 92-11

Manufacturer. Confidential.

Chemical. (G) Aqueous acrylic polymer salts.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 92-12
Manufacturer. Confidential.
Chemical. (G) Aqueous acrylic polymer salts.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 92-13
Manufacturer. Confidential.
Chemical. (G) Aqueous acrylic polymer salts.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 92-14
Manufacturer. Confidential.
Chemical. (G) Aqueous acrylic polymer salts.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 92-15
Manufacturer. Confidential.
Chemical. (G) Aqueous acrylic polymer salts.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 92-16
Manufacturer. Confidential.
Chemical. (G) Carboxylated acrylic polymer salt.
Use/Production. (G) Printing ink vehicle. Prod. range: Confidential.

Y 92-17
Manufacturer. Confidential.
Chemical. (G) Carboxylated acrylic polymer salt.
Use/Production. (G) Printing ink vehicle. Prod. range: Confidential.

Y 92-18
Manufacturer. Confidential.
Chemical. (G) Carboxylated acrylic polymer salt.
Use/Production. (G) Printing ink vehicle. Prod. range: Confidential.

Y 92-22
Manufacturer. Confidential.
Chemical. (G) Polyester polyurethane.
Use/Production. (G) Coating. Prod. range: Confidential.

Y 92-23
Manufacturer. Basf.
Chemical. (G) Polyurethane polymer.
Use/Production. (G) Paint. Prod. range: Confidential.

Y 92-24
Importer. Basf.
Chemical. (G) Styrenated acrylic copolymer.
Use/Import. (G) Paint. Import range: Confidential.

Y 92-25
Importer. Basf.
Chemical. (G) Aqueous polyurethane dispersion.
Use/Import. (G) Paint. Import range: Confidential.

Y 92-26
Importer. Basf.
Chemical. (G) Aqueous polyurethane dispersion.
Use/Import. (G) Paint. Import range: Confidential.

Dated: October 17, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-25538 Filed 10-22-91; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Maryland Port Administration et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200579.
Title: Maryland Port Administration/ Orient Overseas Container Line (U.S.A.) Ltd. terminal Agreement
Parties: Maryland Port Administration ("MPA") Orient Overseas Container Line (U.S.A.), Ltd. ("OOCL")
Synopsis: The proposed Agreement, filed October 11, 1991, would permit the MPA to lease approximately eight acres at its Seagirt Terminal to OOCL for an initial period of two years.

Agreement No.: 202-011353.
Title: Caribbean and Central America Credit Agreement.
Parties: Sea-Land Service, Inc., Crowley Maritime Corporation, Empresa Naviera Santa, S.A., Kirk Lines, Ltd., Venezuela Container Service, Consorsio Naviero Occidente, C.A.
Synopsis: The proposed Agreement would permit the parties to agree on common credit rules and policies and conditions under which credit will or will not be granted to shippers in the trade between the United States, including Puerto Rico and the U.S. Virgin Islands, and all countries in the Caribbean and Central America, including Venezuela, but excluding Colombia.

Dated: October 17, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-25449 Filed 10-22-91; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[File No. 902-3113]

First Brands Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Connecticut manufacturer of Glad plastic bags from representing that the plastic bags offer any environmental benefits when disposed of as trash in a sanitary landfill, unless the respondent has a reasonable basis consisting of competent and reliable scientific evidence that substantiates such representations.

DATES: Comments must be received on or before December 23, 1991.

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: Michael Dershowitz, FTC/S-4002, Washington, D.C. 20580. (202) 326-3158.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following 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. 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 § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of First Brands Corporation, a corporation.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of First Brands Corporation, a corporation, and it now appearing that First Brands Corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is Hereby Agreed by and between First Brands Corporation, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent First Brands Corporation is a Delaware corporation with its office and principal place of business at 83 Wooster Heights Road, Danbury, Connecticut 06813–1911.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

Definition

For purposes of this Order, the following definition shall apply:

First Brands plastic bag means any plastic grocery sack, or any plastic *disposer* bag, including but not limited to trash bags, lawn bags, and kitchen bags, that is offered for sale, sold, or distributed to the public by respondent, its successors and assigns, under the "Glad" bags brand name or any other brand name of respondent, its successors and assigns; and also means any such plastic bag sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

I.

A. *It is ordered* That respondent First Brands Corporation, a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any First Brands plastic bag, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions, or symbols:

(1) That any such plastic bag is "degradable," "biodegradable," or "photodegradable"; or,

(2) Through the use of "degradable," "biodegradable," "photodegradable," or any other substantially similar term or expression, that the degradability of any such plastic bag offers any environmental benefits when disposed of as trash in a sanitary landfill, unless at the time of making such representation, respondent possesses and relies upon a reasonable basis for such representation, consisting of competent and reliable scientific evidence that substantiates such representation. To the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

B. *Provided, however,* respondent will not be in violation of this Order, in connection with the advertising, labeling, offering for sale, sale, or distribution of plastic bags, if it truthfully represents that its plastic bags are designed to degrade or break down, and become part of usable compost along with the bag's contents, when disposed of in programs that collect yard or other waste for composting (that is, the accelerated breakdown of waste into soil-conditioning material), provided that the labeling of such bags and any advertising referring to the degradability of such bags discloses clearly, prominently, and in close proximity to such representation:

(1)(a) That such bags are not designed to degrade in landfills, or

(1)(b) In those States in which composting facilities are required for yard waste, that composting bags are only designed to degrade in such composting facilities; and further discloses

(2)(a) That yard waste composting programs may not be available in the consumer's area, or

(2)(b) The approximate percentage of the U.S. population having access to yard waste composting programs.

For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such representation if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the package. If such representation appears in more than one place on a package, it shall be sufficient if the above-required disclosures appear only on the principal display panel of the package, as "principal display panel" is defined in the Fair Packaging and Labeling Act, 15 U.S.C. 1459(f) (1988).

If the advertising and labeling of respondent's plastic bags otherwise complies with subpart A of part I of this Order, respondent will not be in violation of this Order if it does not make the disclosures in this proviso (subpart B).

II.

It is further ordered That respondent First Brands Corporation, a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising or labeling of any First Brands plastic bag, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using the terms "safe for the environment," "no harm to the environment," "no injury to the environment," "no risk to the environment," "friendly to the environment," or any rearrangement of such terms, e.g., "environmentally safe," "environmentally harmless," "environmentally risk-free" or "environmentally friendly," unless: (1) Respondent discloses clearly, prominently, and in close proximity thereto with reasonable specificity what is meant by such term, and (2) at the time of making such representation, respondent possesses and relies upon a reasonable basis, consisting of competent and reliable scientific evidence that substantiates such representation. To the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results. For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such terms if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the package.

III.

Nothing in this Order shall prevent respondent from using any of the terms cited in parts I and II, or similar terms or expressions, if necessary to comply with any Federal rule, regulation, or law governing the use of such terms in advertising or labeling.

IV.

It is further ordered That respondent may continue to deplete its existing inventory of composting bag packaging in the normal course of business without violating this Order.

V.

It is further ordered That for three (3) years from the date that the representations to which they pertain are last disseminated, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this Order; and

B. All test reports, studies, surveys, or other materials in its possession or control that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation.

VI.

It is further ordered That respondent shall distribute a copy of this Order within sixty (60) days after service of this Order upon it to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation of labeling and advertising and placement of newspaper, periodical, broadcast, and cable advertisements covered by this Order

VII.

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VIII.

It is further ordered That respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

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 respondent First Brands 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.

This matter concerns the package labeling of "Glad" plastic trash bags. The Commission's complaint charges that the respondent's labeling contained unsubstantiated representations concerning the bags' alleged degradability and the environmental benefits that could be obtained when the bags were disposed of as trash. The complaint alleges that the respondent represented that Glad bags offer a significant environmental benefit when consumers dispose of them as trash, and the Glad bags will completely break down, decompose, ad return to nature in a reasonably short period of time after consumers dispose of them as trash.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires the respondent to cease representing that its plastic Glad bags, or bags it manufactures and sells to third parties for further sale or distribution to the public, are "degradable," "photodegradable," or "biodegradable," or more specifically, through the use of such terms or substantially similar terms, that such plastic bags offer any environmental benefits when disposed of as trash in a sanitary landfill, unless the respondent has a reasonable basis for such representations at the time they are made. Part I also contains a proviso that allows the respondent to advertise and label certain plastic bags as "compostable" or "degradable" without violating part I of the proposed order. The respondent may use the terms in labeling, and in advertising that refers to the bags' "degradability," if such bags will in fact degrade, along with leaf and twig yard waste, into usable compost (soil-conditioning material); and if respondent discloses clearly, prominently, and in close proximity to such terms that the bags are not designed to degrade in landfills. In those States in which composting facilities are required for yard waste, the respondent may alternatively disclose that its composting bags are only designed to degrade in such composting facilities. Furthermore, the respondent must also disclose either that yard waste composting programs may not be available in the consumer's area, or the approximate percentage of the U.S. population having access to yard waste composting programs.

Part II of the proposed order provides that if the respondents uses in advertising or labeling such terms as "Safe for the Environment" or "environmentally Friendly," or rearrangements of those terms or certain similar terms, it must have a reasonable basis consisting of competent and reliable scientific evidence that substantiates such representations. Further, to ensure compliance with this provision, the order requires the respondent to clearly disclose, with reasonable specificity, what it means by such terms.

Part III of the proposed order allows the respondent to use the terms cited in parts I and II, or similar terms, and not be in violation of the proposed order, it is necessary for the respondent to comply with any federal rule, regulation, or law governing the use of such terms in advertising or labeling.

Part IV of the proposed order allows the respondent to continue to deplete its existing inventory of composting bag packaging in the normal course of business without violating the order.

The proposed order also requires the respondent to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to certain company officials and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the 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 and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-25497 Filed 10-22-91; 8:45 am]

BILLING CODE 6750-01-M

[File Nos. 902 3337, 912 3024, and 912 3023]

Jason Pharmaceuticals Inc., et al.; National Center for Nutrition, Inc.; and Sandoz Nutrition Corporation; Proposed Consent Agreements With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, the three consent agreements, accepted subject to final Commission approval, would prohibit, among other things, the respondents, marketers of diet programs, from misrepresenting the safety or efficacy of any very-low-calorie diet program and would require respondents to possess competent and reliable scientific evidence to substantiate such claims.

DATES: Comments must be received on or before December 23, 1991.

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: Michael McCarey, FTC/H-200, Washington, DC 20580. (202) 326-3303.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following three consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. 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 § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Jason Pharmaceuticals, Inc., a corporation; and Nutrition Institute of Maryland, Inc., a corporation.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Jason Pharmaceuticals, Inc., a corporation, and Nutrition Institute of Maryland, Inc., a corporation, hereafter sometimes referred to as proposed respondents or respondents, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Jason Pharmaceuticals, Inc., Nutrition Institute of Maryland, Inc., by their duly authorized officers and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Jason Pharmaceuticals, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its offices and principal place of business located at 11435 Cronhill Drive, Owings Mills, Maryland 21117.

2. Proposed respondent Nutrition Institute of Maryland, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its offices and principal place of business located at 11435 Cronhill Drive, Owings Mills, Maryland 21117.

3. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and, except for jurisdictional facts, does not constitute an admission of any facts by proposed respondents or an admission by them that the law has been violated as alleged in the attached draft complaint.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents: (a) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the attached draft complaint and the following order. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For purposes of this Order, *competent and reliable scientific evidence* shall mean those tests, analyses, research, studies, surveys or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession or science to yield accurate and reliable results.

I.

It is ordered That respondents Jason Pharmaceuticals, Inc., and Nutrition Institute of Maryland, Inc., corporations, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss or weight control product, program or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, regarding the safety of any very-low-calorie diet ("VLCD") program (providing 800 calories or less per day), unless respondents clearly and prominently disclose in close proximity to any such representation that physician monitoring is required to minimize the potential for health risks, or otherwise misrepresenting any health risk of the program.

B. Misrepresenting the likehood that patients of respondents' diet program(s) will regain all or any portion of lost weight.

C. Making any representation, directly or by implication, about the success of patients on any diet program in achieving or maintaining weight loss or weight control, unless, at the time of making any such representation, respondents possess and rely upon a reasonable basis consisting of competent and reliable scientific evidence substatiating the representation; *Provided, however,* that for any representation that:

(1) Any weight loss achieved or maintained through any diet program is typical or representative of all or any subset of patients using the program, said evidence shall, at a mininum, be based on a representative sample of: (a) All patients who have entered the program, where the representation relates to such persons; or (b) all patients who have completed a particular phase of the program or the entire program, where the representation only relates to such persons;

(2) Any weight loss of maintained long-term, said evidence shall, at a minimum, be based upon the experience of patients who were followed for a period of at least two years after their completion of the respondents' program (including any periods of participation in respondents' maintenance program); and

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of patients who were followed for a period of time after completing the program that is either: (a) Generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent or (b) demonstrated by compentent and reliable survey evidence as being of sufficient duration to permit such a prediction.

D. Representing, directly or by implication, that any patients of any diet program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation:

(1) The following information:

(a) The average percentage of weight loss maintained by those patients,

(b) The duration over which the weight loss was maintained, measured from the date that patients ended the active weight loss phase of the program, *Provided, however,* that if any portion of the time period covered includes participation in respondents' maintenance program(s) that follows active weight loss, such fact must also be disclosed, and

(c) If the patient population referred to is not representative of the general patient population for that program, the proportion of the total patient population in respondents' programs that those patients represent, expressed in terms of a percentage or actual numbers of patients, or the statement: "Medifast makes no claim that this (these) result(s) is (are) representative of all patients in the Medifast program;" and

(2) The statement:

"For many dieters, weight loss is only temporary", *Provided, however,* that respondents shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondents' diet programs.

E. Representing, directly or by implication, that any physician associated with a diet program is certified in the treatment of obesity unless that is the case.

II.

It is further ordered That respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, the filing of a bankruptcy petition, or any other change in the corporation(s) that may affect compliance obligations arising out of this Order.

III.

It is further ordered That respondents shall maintain for a period of three (3) years after the date the representation was last made, and make available to the Federal Trade Commission staff upon request for inspection and copying, all materials possessed and relied upon to substantiate any claim or representation covered by this Order, and all test reports, studies, surveys or information in their possession or control and which to their knowledge contradict, qualify or call into question any such claim or representation.

IV.

It is further ordered That respondents and their successors or assigns, shall forthwith distribute a copy of this Order to each of their officers, agents, representatives, independent contractors and employees who are engaged in the preparation and placement of advertisements or promotional materials, or who have any responsibilities with respect to the subject matter of this Order; and, for a period of ten (10) years from the date of entry of this Order, distribute same to all of respondents' future officers, agents, representatives, independent contractors and employees having said responsibilities.

V.

It is further ordered That respondents and their successors or assigns shall, within thirty (30) days after service of this Order, advise Medifast Associate Physicians that advertising previously furnished by respondents for use by physicians, and brochures, pamphlets and booklets previously provided by respondents to physicians for dissemination to patients and prospective patients, shall not be further used by those physicians where that advertising or other materials would violate this Order; and respondents further shall attempt to insure that such advertising or other materials shall not be further used by Medifast Associate Physicians.

VI.

It is further ordered That respondents and their successors or assigns shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Jason Pharmaceuticals, Inc. and Nutrition Institute of Maryland, Inc., of Owings Mills, Maryland, marketers of the "Medifast" rapid-weight loss, very-low calorie diet program. The Medifast diet program is offered to the public nationwide through independent physicians and medical clinics.

The proposed consent order has been placed on the public record for sixty (60) days for the 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 will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondents deceptively advertised the safety and efficacy of the Medifast diet program, as well as the certification of Medifast physicians.

Safety

The Commission has alleged that Jason Pharmaceuticals, Inc. and Nutrition Institute of Maryland, Inc. failed to disclosed that physician monitoring is required to minimize the potential for health risks on very-low-calorie diets. Those companies claimed that the Medifast diet program is unqualifiedly free of serious health risks.

The complaint does not allege that the Medifast diet program is unsafe, but that proposed respondents' claim that the program is risk-free was deceptive in light of their failure to disclose that physician monitoring is required to minimize the potential for health risks. There is some empirical evidence that, during the period in which they are dieting, patients on very low calorie diets may be at increased risk of developing gallstones.

The proposed consent order seeks to address the alleged safety misrepresentation cited in the accompanying complaint in two ways (part I.A.). First, the order requires Jason Pharmaceuticals, Inc. and Nutrition Institute of Maryland, Inc. to disclose in conjunction with any claim regarding the safety of any very-low-calorie diet program that physician monitoring is required to minimize the potential for health risks. Thus, if proposed respondents in the future where to claim that the Medifast program is "safe," they would need to make the required disclosure in close proximity to that claim.

Second, the proposed order prohibits any misrepresentation about any health risk of the program. Thus, proposed respondents in the future could not claim that patients have experienced no serious adverse side effects, unless that is the case.

Efficacy

The Commission has further alleged that Jason Pharmaceuticals, Inc. and Nutrition Institute of Maryland failed to possess a reasonable basis for claims they made regarding the success of Medifast patients avoiding the regain of weight loss during the program. The companies claimed that the Medifast program is a successful long-term or permanent treatment for obesity, and that the typical Medifast patient is successful in maintaining weight loss achieved under the program.

The Commission believes that these success claims for patient maintenance of achieved weight loss were deceptive because the proposed respondents at the time they made the claims did not possess adequate substantiation that Medifast patients successfully maintain achieved weight loss.

The proposed consent order seeks to address the alleged efficacy misrepresentations cited in the accompanying complaint in several ways. First, the order prohibits Jason Pharmaceuticals, Inc. and Nutrition Institute of Maryland, Inc. from misrepresenting the likelihood that patients of their diet programs will regain all or any portion of lost weight (part I.B.).

Second, the order requires those companies to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the success of patients on any diet program in achieving or maintaining weight loss. As a fencing-in measure to ensure compliance, the order further specifies what this level of evidence shall consist

of when certain types of success claims are made:

(1) In the case of claims that weight loss is typical or representative of all patients using the program or any subset of those patients, that evidence shall be based on a representative sample of: (a) All patients who have entered the program, where the representation relates to such persons; or (b) all patients who have completed a particular phase of the program or the entire program, where the representation only relates to such persons.

(2) In the case of claims that any weight loss is maintained long-term, that evidence shall be based upon the experience of patients who were followed for a period of at least two years after their completion of the respondents' program, including any periods of participation in respondents' maintenance program.

(3) In the case of claims that weight loss is maintained permanently, that evidence shall be based upon the experience of patients who were followed for a period of time after completing the program that is either: (a) generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction (part I.C.).

Finally, as fencing-in measures to ensure compliance, the proposed order requires the proposed respondents for any claim that patients of any diet program have successfully maintained weight loss to disclose the fact that, "For many dieters, weight loss is only temporary," as well as the following information relating to that claim (part I.D.):

(1) The average percentage of weight loss maintained by those patients (e.g., "60% of achieved weight loss was maintained"),

(2) The duration over which the weight loss was maintained, measured from the date that patients ended the active weight loss phase of the program, and the fact that all or a portion of the time period covered includes participation in proposed respondents' maintenance program(s) that follows active weight loss, if that is the case (e.g., "60% of weight loss was maintained 18 months after fasting, including 3 months on maintenance"), and

(3) Where the patient population referred to is not representative of the general patient population of that program, the proportion of the total patient population that those patients represents, expressed in terms of a percentage or actual numbers of patients (e.g., "40% of patients who completed maintenance kept off 60% of lost weight 18 months after fasting—this success was achieved by 15% of all Medifast patients"), or, in lieu of that factual disclosure, the statement: "Medifast makes no claim that this result is representative of all patients in the Medifast program."

Physician Certification

The Commission has alleged that Jason Pharmaceuticals, Inc. and Nutrition Institute of Maryland, Inc. misrepresented that all of its associated physicians were certified, through an objective evaluation process, in the treatment of obesity.

The Commission believes that the certification claim was deceptive because, in fact, the proposed respondents "certified" their associated physicians by having them sign a form stating that the practitioner was a licensed physician or osteopath and had read the Medifast program manuals supplied to them by the proposed respondents, or had attended a seminar or training course provided by the Nutrition Institute of Maryland, Inc. Many of the Medifast physicians were not certified in the treatment of obesity through an objective evaluation process.

The proposed consent order seeks to remedy the alleged certification misrepresentation cited in the accompanying complaint by prohibiting Jason Pharmaceuticals, Inc. and Nutrition Institute of Maryland, Inc. from representing that any physicians associated with their diet programs are certified in the treatment of obesity, unless that is the case (part I.E.).

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

In the Matter of National Center for Nutrition, Inc., a corporation.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of National Center for Nutrition, Inc., hereafter sometimes referred to as proposed respondent or respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between National Center for Nutrition, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Respondent National Center for Nutrition, Inc., is a Virginia corporation, with its offices and principal place of business at 8560 Cinderbed Road, suite 1500, Newington, Virginia, 22122.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint.

6. This agreement contemplates that, if it is accepted by the commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondent: (a) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within

the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the attached draft complaint and the following order. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

Definition

For purposes of this order, "*competent and reliable scientific evidence* shall mean those tests, analyses, research, studies, surveys or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession or science to yield accurate and reliable results.

It is ordered That respondent National Center for Nutrition, a Virginia corporation, its successors and assigns, officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss or weight control product, program or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, regarding the safety of any very-low-calorie diet ("VLCD") program (providing 800 calories or less per day), unless respondent clearly and prominently discloses in close proximity to any such representation that physician monitoring is required to minimize the potential for health risks, or otherwise misrepresenting any health risk of the program.

B. Misrepresenting the likelihood that patients of respondent's diet program(s) will regain all or any portion of lost weight.

C. Making any representation, directly or by implication, about the success of patients on any diet program to achieve or maintain weight loss or weight control unless, at the time of making such representation, respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence substantiating the representation; *Provided, however,* That for any representation that:

(1) Any weight loss achieved or maintained through any diet program is typical or representative of all or any subset of patients using the program, said evidence shall, at a minimum, be based on a representative sample of: (a) All patients who have entered the program, where the representation relates to such persons; or (b) all patients who have completed a particular phase of the program or the entire program, where the representation only relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of patients who were followed for a period of at least two years after completion of respondent's program (including any periods of participation in active maintenance); and

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of patients who were followed for a period of time after completing the program that is either: (a) Generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent of (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

D. Representing, directly or by implication, that any patients of any diet program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation:

(1) The following information:

(a) The average percentage of weight loss maintained by those patients,

(b) The duration, over which the weight loss was maintained, measured from the date that patients ended the active weight loss phase of the program, *Provided, however,* That if any portion of the time period covered includes participation in respondent's maintenance program(s) that follows active weight loss, such fact must also be disclosed, and

(c) If the patient population referred to is not representative of the general patient population for that program, the proportion of the total patient population in respondent's programs that those patients represent, expressed in terms of a percentage or actual numbers of patients, or the statement: "Ultrafast makes no claim that this (these) result(s) is (are) representative of all patients in the Ultrafast program;" and

(2) The statement:

"For many dieters, weight loss is only temporary," *Provided, however,* That, respondent shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondent's diet programs.

E. Making comparisons between the safety of respondent's diet program or programs and the safety of any other diet program or programs, unless at the time of making such representation, respondent possesses and relies upon a reasonable basis for making such representation. Such reasonable basis shall consist of a competent and reliable scientific study or studies substantiating the representation in terms of both the safety of respondent's diet program or programs and the safety of the diet program or programs with which the comparison is made.

F. Misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study.

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, the filing of a bankruptcy petition, or any other change in the corporation(s) that may affect compliance obligations arising out of this Order.

III.

It is further ordered That respondent shall maintain for a period of three (3) years after the date the representation was last made, and make available to the Federal Trade Commission staff upon request for inspection and copying, all materials possessed and relied upon to substantiate any claim or representation covered by this Order, and all test reports, studies, surveys or information in its possession or control or of which it has knowledge that contradict, qualify or call into question any such claim or representation.

IV.

It is further ordered That respondent and its successors or assigns, shall forthwith distribute a copy of this Order to each of its officers, agents, representatives, independent contractors and employees, that are engaged in the preparation and placement of advertisements or promotional materials, who communicate with patients or prospective patients, or who have any responsibilities with respect to the subject matter of this Order; and, for a period of ten (10) years from the date of entry of this Order, distribute same to all of respondent's future officers, agents, representatives, independent contractors and employees having said responsibilities. *Provided, however,* That nothing in this order shall obligate respondent with respect to advertising or promotional materials of participating physicians, hospitals and clinics that are neither owned, operated or controlled by respondent when said advertising is not prepared, approved or placed by respondent.

V.

It is further ordered That respondent and its successors or assigns, shall, within thirty (30) days after service of this Order, advise physicians, hospitals and clinics using the Ultrafast diet program that advertising previously furnished by respondent for their use, and brochures, pamphlets and booklets previously provided by respondent to physicians, hospitals, and clinics for dissemination to patients and prospective patients, shall not be further used by those physicians, hospitals and clinics where that advertising or other materials would violate this Order. If, after providing the notification required by the first sentence in this Paragraph V, respondent becomes aware that any physician, hospital or clinic using the Ultrafast diet program, uses advertising or other materials previously furnished by respondent that would violate this order, respondent shall again communicate with that physician, hospital or clinic in an attempt to ensure that such advertising or other materials shall not be further used by said physician, hospital or clinic.

VI.

It is further ordered That respondent and its successors or assigns shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from National Center for Nutrition, Inc., marketer of the "Ultrafast" rapid-weight loss, very-low-calorie diet program. The Ultrafast diet program is offered to the public nationwide through independent physicians and medical clinics.

The proposed consent order has been placed on the public record for sixty (60) days for the 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 will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondents deceptively advertised the safety and efficacy of the Ultrafast diet program.

Safety

The Commission has alleged that National Center for Nutrition, Inc., failed to disclose that physician monitoring is required to minimize the potential for health risks on very-low-calorie diets. The company claimed that the Ultrafast diet program is unqualifiedly free of serious health risks.

The complaint does not allege that the Ultrafast diet program is unsafe, but that proposed respondents' claim that the program is risk-free was deceptive in light of their failure to disclose that physician monitoring is required to minimize the potential for health risks. There is some empirical evidence that, during the period in which they are dieting, patients on very low calorie diets may be at increased risk of developing gallstones.

The proposed consent order seeks to address the alleged safety misrepresentation cited in the accompanying complaint in two ways (Part I.A.), First, the order requires National Center for Nutrition, Inc., to disclose in conjunction with any claim regarding the safety of any very-low-calorie diet program that physician monitoring is required to minimize the potential for health risks. Thus, if proposed respondent in the future were to claim that the Ultrafast program is "safe," it would need to make the required disclosure in close proximity to that claim. Second, the proposed order prohibits any misrepresentation about any health risk of the program. Thus, proposed respondents in the future could not claim that patients have experienced no serious adverse side effects, unless that is the case.

The Commission has also alleged that National Center for Nutrition, Inc., misrepresented that scientific studies proved that its type of diet (a very-low-calorie diet) is safer than all other diet programs that are not very-low-calorie diets. The Commission further alleges that no competent and reliable scientific evidence has established that very-low-calorie diets are superior to all other types of diets in terms of safety, and, therefore, the claim that the company made was false.

The proposed order prohibits National Center for Nutrition, Inc., from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study.

Efficacy

The Commission has further alleged that National Center for Nutrition, Inc., failed to possess a reasonable basis for claims it made regarding the success of Ultrafast patients in avoiding the regain of weight lost during the program. The company claimed that the Ultrafast program is a successful long-term or permanent treatment for obesity, and that the typical Ultrafast patient is successful in maintaining weight loss achieved under the program.

The Commission believes that these success claims for patient maintenance of achieved weight loss were deceptive because the proposed respondents at the time they made the claims did not possess adequate substantiation that Ultrafast patients successfully maintain achieved weight loss.

The proposed consent order seeks to address the alleged efficacy misrepresentations cited in the accompanying compliant in several ways. First, the order prohibits National Center for Nutrition, Inc., from misrepresenting the likelihood that patients of its diet programs will regain all or any portion of lost weight (Part I.B.).

Second, the order requires the company to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the success of patients on any died program in achieving or maintaining weight loss. As a fencing-in measure to ensure compliance, the order further specifies what this level of evidence shall consist of when certain types of success claims are made:

(1) In the case of claims that weight loss is typical or representative of all patients using the program or any subset of those patients, that evidence shall be based on a representative sample of: (a)

all patients who have entered the program, where the representation relates to such persons; or (b) all patients who have completed a particular phase of the program or the entire program, where the representation only relates to such persons.

(2) In the case of claims that any weight loss is maintained long-term, that evidence shall be based upon the experience of patients who were followed for a period of at least two years after their completion of the respondents' program, including any periods of participation in respondents' maintenance program.

(3) In the case of claims that weight loss is maintained permanently, that evidence shall be based upon the experience of patients who were followed for a period of time after completing the program that is either: (a) Generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction (part I.C.).

Finally, as fencing-in measures to ensure compliance, the proposed order requires the proposed respondents for any claim that patients of any diet program have successfully maintained weight loss to disclose the fact that "For many dieters, weight loss is only temporary," as well as the following information relating to that claim (part I.D.):

(1) The average percentage of weight loss maintained by those patients (e.g., "60% of achieved weight loss was maintained"),

(2) The duration over which the weight loss was maintained, measured from the date that patients ended the active weight loss phase of the program, and the fact that all or a portion of the time period covered includes participation in proposed respondents' maintenance program(s) that follows active weight loss, if that is the case (e.g., "60% of weight loss was maintained 18 months after fasting, including 3 months on maintenance"), and

(3) Where the patient population referred to is not representative of the general patient population for that program, the proportion of the total patient population that those patients represent, expressed in terms of a percentage or actual numbers of patients (e.g., "40% of the patients who completed maintenance kept off 60% of lost weight 18 months after fasting—this success was achieved by 15% of all Ultrafast patients"), or, in lieu of that factual disclosure, the statement: "Ultrafast makes no claim that this result is representative of all patients in the Ultrafast program."

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

In the Matter of Sandoz Nutrition Corporation, a corporation.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Sandoz Nutrition Corporation, hereinafter sometimes referred to as proposed respondent or respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Sandoz Nutrition Corporation, by is duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Respondent Sandoz Nutrition Corporation is a Delaware corporation, with its offices and principal place of business at 5320 West 23rd Street, Minneapolis, Minnesota 55416.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondent: (a) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the attached draft complaint and the following order. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For purposes of this order, *competent and reliable scientific evidence* shall mean those tests, analyses, research, studies, surveys or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession or science to yield accurate and reliable results.

I.

It is ordered, that respondent Sandoz Nutrition Corporation, a Delaware corporation, its successors and assigns, officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss or weight control product, program or service, in or affecting commerce, as *commerce* is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, regarding the safety of any very-low-calorie diet ("VLCD") program (providing 800 calories or less per day), unless respondent clearly and prominently discloses in close proximity to any such representation that physician monitoring is required to minimize the potential for health risks, or otherwise misrepresenting any health risk of the program.

B. Misrepresenting the likelihood that patients of respondent's diet program(s) will regain all or any portion of lost weight.

C. Making any representation, directly or by implication, about the success of patients on any diet program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence substantiating the representation; *Provided, however,* That any representation that:

(1) Any weight loss achieved or maintained through any diet program is typical or representative of all or any subset of patients using the program, said evidence shall, at a minimum, be based on a representation sample of: (a) all patients who have entered the program, where the representation relates to such persons; or (b) all patients who have completed a particular phase of the program or the entire program, where the representation *only* relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of the patients who were followed for a period of at least two years after completion of respondent's program (including any periods of participation in active maintenance); and

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of patients who were followed for a period of time after completing the program that is either: (a) Generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

D. Representing, directly or by implication, that any patients of any diet program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation:

(1) The following information:

(a) The average percentage of weight loss maintained by those patients,

(b) The duration, over which the weight loss was maintained, measured from the date that patients ended the active weight loss phase of the program, *Provided, however,* That if any portion of the time period covered includes participation in respondent's maintenance program(s) that follows active weight loss, such fact must also be disclosed, and

(c) If the patient population referred to is not representative of the general patient population for that program, the proportion of the total patient population in respondent's programs that those patients represent, expressed in terms of a percentage or actual numbers of patients, or the statement: "Optifast makes no claim that this (these) result(s) is (are) representative of all patients in the Optifast program;" and

(2) The statement:

"For many dieters, weight loss is only temporary." *Provided, however,* That, respondent shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondents's diet programs.

E. Making comparisons between the efficacy of respondent's diet program or programs and the efficacy of any other diet program or programs, unless at the time of making such representation, respondent possesses and relies upon a reasonable basis for making such representation. Such reasonable basis shall consist of a competent and reliable scientific study or studies substantiating the representation in terms of both the efficacy of respondent's diet program or programs and the efficacy of the diet program or programs with which the comparison is made.

F. Misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study.

II.

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, the filing of a bankruptcy petition, or any other change in the corporation(s) that may affect compliance obligations arising out of this Order.

III.

It is further ordered That respondent shall maintain for a period of three (3) years after the date the representation was last made, and make available to the Federal Trade Commission staff upon request for inspection and copying, all materials possessed and relied upon to substantiate any claim or representation covered by this Order, and all test reports, studies, surveys or information in its possession or control or of which it has knowledge that contradict, qualify or call into question any such claim or representation.

IV.

It is further ordered That respondent and its successors or assigns, shall forthwith distribute a copy of this Order to each of its officers, agents, representatives, independent contractors and employees, including participating hospitals or clinics, that are engaged in the preparation and placement of advertisements or promotional materials, who communicate with patients or prospective patients, or who have any responsibilities with respect to the subject matter of this Order; and, for a period of ten (10) years from the date of entry of this Order, distribute same to all of respondent's future officers, agents, representatives, independent contractors and employees having said responsibilities.

V.

It is further ordered That respondent and its successors or assigns shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Sandoz Nutrition Corporation, marketer of the "Optifast"

rapid-weight loss, very-low-calorie diet program. The Optifast diet program is offered to the public nationwide through hospitals and medical clinics.

The proposed consent order has been placed on the public record for sixty (60) days for the 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 will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondents deceptively advertised the safety and efficacy of the Optifast diet program.

Safety

The Commission has alleged that Sandoz Nutrition Corporation failed to disclose that physician monitoring is required to minimize the potential for health risks on very-low-calorie diets. The company claimed that the Optifast diet program is unqualifiedly free of serious health risks.

The complaint does not allege that the Optifast diet program is unsafe, but that proposed respondents' claim that the program is risk-free was deceptive in light of their failure to disclose that physician monitoring is required to minimize the potential for health risks. There is some empirical evidence that, during the period in which they are dieting, patients on very low calorie diets may be at increased risk of developing gallstones.

The proposed consent order seeks to address the alleged safety misrepresentation cited in the accompanying complaint in two ways (part I.A.). First, the order requires Sandoz Nutrition Corporation, to disclose in conjunction with any claim regarding the safety of any very-low-calorie diet program that physician monitoring is required to minimize the potential for health risks. Thus, if proposed respondent in the future were to claim that the Optifast program is "safe," it would need to make the required disclosure in close proximity to that claim. Second, the proposed order prohibits any misrepresentation about any health risk of the program. Thus, proposed respondents in the future could not claim that patients have experienced no serious adverse side effects, unless that is the case.

Efficacy

The Commission has further alleged that Sandoz Nutrition Corporation failed to possess a reasonable basis for claims it made regarding the success of Optifast patients in avoiding the regain of weight lost during the program. The company claimed that the Optifast program is a successful long-term or permanent treatment for obesity, and that the typical Optifast patient is successful in maintaining weight loss achieved under the program.

The Commission believes that these success claims for patient maintenance of achieved weight loss were deceptive because the proposed respondents at the time they made the claims did not possess adequate substantiation that Optifast patients successfully maintain achieved weight loss.

The proposed consent order seeks to address the alleged efficacy misrepresentations cited in the accompanying complaint in several ways. First, the order prohibits Sandoz Nutrition Corporation from misrepresenting the likelihood that patients of its diet programs will regain all or any portion of lost weight (part I.B.).

Second, the order requires the company to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the success of patients on any diet program in achieving or maintaining weight loss. As a fencing-in measure to ensure compliance, the order further specifies what this level of evidence shall consist of when certain types of success claims are made:

(1) In the case of claims that weight loss is typical or representative of all patients using the program or any subset of those patients, that evidence shall be based on a representative sample of: (a) All patients who have entered the program, where the representation relates to such persons; or (b) all patients who have completed a particular phase of the program or the entire program, where the representation only relates to such persons.

(2) In the case of claims that any weight loss is maintained long-term, that evidence shall be based upon the experience of patients who were followed for a period of at least two years after their completion of the respondents' program, including any periods of participation in respondents' maintenance program.

(3) In the case of claims that weight loss is maintained permanently, that evidence shall be based upon the experience of patients who were followed for a period of time after completing the program that is either: (a) Generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction (part I.C.).

Finally, as fencing-in measures to ensure compliance, the proposed order requires the proposed respondents for any claim that patients of any diet program have successfully maintained weight loss to disclose the fact that "For many dieters, weight loss is only temporary," as well as the following information relating to that claim (part I.D.):

(1) The average percentage of weight loss maintained by those patients (e.g., "60% of achieved weight loss was maintained"),

(2) The duration over which the weight loss was maintained, measured from the date that patients ended the active weight loss phase of the program, and the fact that all or a portion of the time period covered includes participation in proposed respondents' maintenance program(s) that follows active weight loss, if that is the case (e.g., "60% of weight loss was maintained 18 months after fasting, including 3 months on maintenance"), and

(3) Where the patient population referred to is not representative of the general patient population for that program, the proportion of the total patient population that those patients represent, expressed in terms of a percentage or actual numbers of patients (*e.g.*, "40% of patients who completed maintenance kept off 60% of lost weight 18 months after fasting—this success was achieved by 15% of all Optifast patients"), or, in lieu of that factual disclosure, the statement: "Optifast makes no claim that this result is representative of all patients in the Optifast program."

The Commission has also alleged that Sandoz Nutrition Corporation misrepresented that scientific studies proved that the Optifast program is superior to all other weight loss programs at maintaining weight loss. The Commission further alleges that no competent and reliable scientific evidence has established that the Optifast program is superior to all other types of diets in terms of weight loss maintenance, and, therefore, the claim that the company made was false.

The proposed order prohibits Sandoz Nutrition Corporation from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study.

The purpose of this analysis is to facilitate public comment on the

proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-25498 Filed 10-22-91; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Performance Review Board; Membership; Senior Executive Service

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Donald P. Heffernan, Acting Director of Personnel, General Services Administration, 18th and F Streets, NW., Washington, DC 20405 (202) 501-0398.

SUPPLEMENTARY INFORMATION: Section 4313(c)(1) through (5) of title 5 U.S.C. requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The boards shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The members of the Performance Review Board are:

1. James A. Lobmaster, (Chairperson) Chief of Staff.
2. Carlene Bawden, Associate Administrator for Administration.
3. John Myers, Deputy Regional Administrator, National Capital Region.
4. Roger D. Daniero, Commissioner, Federal Supply Service.
5. Richard H. Hopf, Associate Administrator for Acquisition Policy.
6. Delwyn D. Stromer, Regional Administrator, Region 6.
7. Steven R. Mead, Controller, Public Buildings Service.
8. Judith A. Parks, Assistant Commissioner for GSA Information Resources Management.
9. John F. Wynn, Director, Office of Small and Disadvantaged Business Utilization.

Dated: October 2, 1991.

Donald P. Heffernan,

Acting Director of Personnel.

[FR Doc. 91-25444 Filed 10-22-91; 8:45 am]

BILLING CODE 6820-BC-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 15¼% for the quarter ended September 30, 1991. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: October 16, 1991.

Dennis J. Fischer,

Deputy Assistant Secretary, Finance.

[FR Doc. 91-25442 Filed 10-22-91; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 91N-0422]

Drug Export; Imitrex™ (Sumatriptan Succinate) Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Glaxo Inc. has filed an application requesting approval for the export of the human drug Imitrex™ (sumatriptan succinate) Tablets to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room, 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contract person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frank R. Fazzari, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirements, the agency is providing notice that Glaxo Inc., 5 Moore Dr., P.O. Box 13358, Research Triangle Park, NC 27709, has filed an application requesting approval for the export of the drug Imitrex™ (sumatriptan succinate) Tablets to Canada. This product is used in the acute treatment of migraine attacks. The application was received and filed in the Center for Drug Evaluation and Research on September 9, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 4, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: October 10, 1991

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 91-25495 Filed 10-22-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0419]

Drug Export; Ketorolac Tromethamine Tablets

AGENCY: Food and Drug Administration, HHS..

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Syntec Research has filed an application requesting approval for the export of the human drug Ketorolac Tromethamine Tablets to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frank R. Fazzari, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Syntex Research, 3401 Hillview Ave., Palo Alto, CA 94303, has filed an application requesting approval for the export of the drug Ketorolac Tromethamine Tablets to Canada. This product is indicated for short-term management of mild to moderately severe pain, including post-surgical pain (such as general, orthopedic and dental surgery), acute musculoskeletal trauma pain and post-partum uterine cramping pain. The application was received and filed in the Center for Drug Evaluation and Research on September 26, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 4, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and research (21 CFR 5.44).

Dated: October 10, 1991.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 91-25496 Filed 10-22-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Hearing: Reconsideration of Disapproval of Minnesota State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on November 26, 1991, in the 15th floor Conference Room, 105 W. Adams Street, Chicago, Illinois to reconsider our decision to disapprove Minnesota SPA 90-37.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by November 7, 1991.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, Telephone: (301) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Minnesota State Plan Amendment (SPA) number 90-37.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Minnesota SPA 90-37 contains a list of Medicaid obstetrical and pediatric payment rates and data alleging at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants.

The issue here is whether the plan amendment meets the statutory provisions of section 1926(a) of the Act and thus, also complies with section 1902(a)(30(A) of the Act.

Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliaiton Act of 1989, Public Law 101-239, requires that by no later than April 1 of each year (beginning in 1990) States are to submit plan amendments specifying their payment rates for obstetrical practitioner services and pediatric practitioner services. States also must provide specific information to document that those payment rates are sufficient to enlist enough providers such that obstetrical and pediatric services are available to Medicaid recipients to least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) of the Act). In addition, States must submit data to document that payments to health maintenance organizations (HMOs) take into account payment rates for fee-for-

service obstetrical and pediatric services;

HCFA has determined that for obstetrical and pediatric rate SPAs to be approvable, they must include the following:

1. Payment rates for this year and next year (i.e. 1991 and 1992) for those obstetrical and pediatric services covered under the State's plan. Pediatric rates must be specified by procedure, and we recommend the same format be followed for obstetrical services;

2. Data that document that payment rates for obstetrical and pediatric services are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area; and,

3. Data that document that payment rates to HMOs under section 1903(m) of the Act take into account the payment rates specified in number 1 above.

HCFA has also developed several guidelines that if met by the State would evidence that the state meets the statutory requirements of section 1926 of the Act. These guidelines are set forth in a draft State Medicaid manual (SMM) revision dated March 26, 1990.

Based upon the data submitted, HCFA has determined that Minnesota's amendment does not comply with the statutory requirements of section 1926 of the Act and, thus, also does not comply with section 1902(a)(30)(A) of the Act. The State argues that it met the statutory requirements under Guideline 1 of the March 26 draft SMM issuance. It permits the State to document its compliance with the statute by submitting data showing that at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants or that Medicaid participation is at the same rate as Blue Shield participation. The State claims that it exceeds the 50 percent criteria. HCFA has determined that the data submitted are insufficient to demonstrate adequacy of access and therefore, do not meet the statutory requirement. Specifically, the State has not provided a break-out of the data for general practitioners and family practitioners by those who provide obstetrical care, pediatric care or both obstetrical and pediatric care.

The State has not included data or accounted for those obstetrical and pediatric nonphysician practitioners cited in the statutory definition of obstetrical and pediatric services. If nonphysician practitioners, such as certified nurse practitioners or certified nurse midwives, render obstetrical or pediatric services in Minnesota, they should be included in the State's data Without the above data, HCFA is unable to accurately determine the rate of obstetrical and pediatric practitioners in Medicaid.

Furthermore, the State indicated that in areas where individual physicians are not immediately available, recipients have full access to clinic services for obstetrical and pediatric services. Clinics do not fall within the definition of obstetrical or pediatric services as defined in section 1926(a)(4) of the Act. Those definitions include only individual providers in the singular while specifically excluding inpatient or outpatient hospital services or other institutional services. In light of this, HCFA believes the intent of the Congress was to exclude services delivered on an outpatient basis by clinics. The payment mechanism, at 42 CFR 447.321, is the same for clinic services and outpatient hospital services. Therefore, any data submitted to document the State's compliance with the practitioner participation standard, set forth in the March 26, 1990 draft SMM, must exclude clinics.

This does not mean that the State cannot use clinic data to help prove access. For example, a statement such as "in rural areas where a shortage of physicians that provide these services exists for the general population as well as for Medicaid recipients, recipients have access" may be an acceptable rationale, provided the general population has the same access problems to individual practitioners as Medicaid recipients. If so, the State needs to provide a specific statement to that effect for every appropriate substate geographic area to which it applies.

Where the State cites out-of-state practitioners, Minnesota needs to specify not only the location of such practitioners, but also must indicate the appropriate substate geographic areas which are serviced by such out-of-state providers. The State must also document that access patterns are the same for both Medicaid recipients and the general population.

In its initial SPA 90-37, the State submitted data explaining how payment rates for obstetrical and pediatric services are incorporated into the capitation rates for Medicaid contracting HMOs. The data submitted met the requirement of the statute. However, HCFA found that the data was reported in the State's letter, not in the plan amendment. In a formal request for additional information, the State was asked to include the data in the State plan itself. However, in the revised amendment, it appears that the State has deleted the HMO data entirely. In order for HCFA to approve this portion of the amendment, the State must include the data in the State plan itself.

The notice to Minnesota announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Robert Baird

Director, Health Care Programs Division, Department of Human Services, 444 Lafayette Road, 6th Floor, St. Paul, Minnesota 55155-3848

Dear Mr. Baird: I am responding to your request for reconsideration of the decision to disapprove Minnesota State plan amendment (SPA) 90-37. Minnesota submitted SPA 90-37 to establish the State's compliance with section 1926 of the Social Security Act (the Act).

Section 1926 of the Act, as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, requires that by no later than April 1 of each year (beginning in 1990), States are to submit plan amendments specifying their payment rates for obstetrical practitioner services and pediatric practitioner services. States also must provide specific information to document that those payment rates are sufficient to enlist enough providers such that obstetrical and pediatric services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (Section 1902(a)(30)(A) of the Act). In addition, States must submit data to document that payments to health maintenance organizations take into account payment rates for fee-for-service obstetrical and pediatric services.

The issue in this matter is whether the plan amendment meets the statutory provisions of section 1926(a) of the Act and thus, also complies with section 1902(a)(30)(A) of the Act.

I am scheduling a hearing on your request for reconsideration to be held on November 26, 1991, in the 15th floor Conference Room, 105 W. Adams Street, Chicago, Illinois. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 597-3013.

Sincerely,

Gail R. Wilensky,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: October 16, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-25443 Filed 10-22-91; 8:45 am]

BILLING CODE 4120-03-M

Public Health Service

National Vaccine Advisory Committee, Public Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary of Health are announcing the forthcoming meeting of the National Vaccine Advisory Committee.

DATES: Date, Time and Place: November 25, 1991 at 9 a.m.; November 26, at 8:30 a.m.; Hubert H. Humphrey Building, room 703A, 200 Independence Avenue, SW., Washington, DC 20201. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Kenneth J. Bart, M.D. M.P.H., Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program, 5600 Fishers Lane, Parklawn Building, room 13A-53, Rockville, Maryland 20857, (301) 443-0715.

Agenda: Open Public Hearing: Interested persons may formally present data, information, or views orally or in writing on issues pending before the Advisory Committee or on any of the duties and responsibilities of the Advisory Committee as described below. Those desiring to make such presentations should notify the contact person before November 11, 1991, and submit a brief statement of the information they wish to present to the Advisory Committee. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 15 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Advisory Committee Discussion: There will be updates on acellular pertussis vaccine trials, and on epidemiology of measles. There will be meetings on the three subcommittees: Access to Services; the National Vaccine Plan; and the Vaccine Injury Compensation Program. A discussion on issues concerning potential under reporting of adverse events will also be on the agenda. Meetings of the Advisory Committee shall be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notices. Changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items may ascertain from the contact person the approximate time of discussion. A list of Advisory Committee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contactperson. Summary minutes of the meeting will be made available upon request from the contact person.

Dated: October 10, 1991.

Kenneth J. Bart,

Executive Secretary, NVAC.

[FR Doc. 91-25535 Filed 10-22-91; 8:45 am

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-91-3337; FR-3007]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer; Office of Management and Budget; New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained form Mr. Cristy.

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 description of the need for the information and its proposed use; (40 the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 7, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Community Development Plan 24 CFR part 570—Community Development Block Grant Entitlement Program Revision of Part 570 (FR-3007).

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: Section 922 of the National Affordable Housing Act of 1990 (NAHA) adds a new section 104(1) which requires the Community Development Block Grant (CDBG) recipients to develop a community development plan. The plan identifies the communities non-housing community development needs and strategies. Grantees would be required to develop a non-housing communities development plan and submit it to the Department prior to the release of CDBG entitlement funds.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Community development plan	860		.25		100		21,500

Total Estimated Burden Hours: 21,500.
Status: New.
Contact: James R. Broughman, HUD, (202) 708–1577, Jennifer Main, OMB, (202) 395–6880.

Dated: October 7, 1991.

[FR Doc. 91–25513 Filed 10–22–91; 8:45 am]

BILLING CODE 4210–01–M

Assistant Secretary for Public and Indian Housing

[Docket No. N–91–3336]

Submission of Proposed Information Collection to OMB; Formula Characteristics Report for the Comprehensive Grant Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal.

DATES: Comment due date is October 25, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by title and docket number and should be sent to both of the following:

Jennie Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Joan Campion, Rules Docket Clerk, Department of HUD, 451 Seventh Street, SW, room 10276, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4142, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, an information collection package with respect to the Formula Characteristics Report required by the Comprehensive Grant Program (CGP). The CGP was authorized by section 14 of the U.S. Housing Act of 1937, as amended by section 119 of the Housing and Community Development (HCD) Act of 1987 and section 509 of the Cranston-Gonzalez National Affordable Housing Act (NAHA). It is also requested that OMB complete its review within seven days.

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);

(1) *Title of the information collection proposal:* Formula Characteristics Report.

(2) *Office of the agency to collect the information:* Office of the Assistant Secretary for Public and Indian Housing.

(3) *Description of the need for the information and its proposed use:* The data that will be collected on the Formula Characteristics Report is necessary for HUD to determine a PHA's/IHA's formula share for the national allocation of funds. HUD will generate the report from its data bases and transmit it to PHAs/IHAs annually for validation.

(4) *Agency form number:* Not applicable at this time.

(5) *Members of the public who will be affected by the proposal:* Public and Indian Housing Authorities.

(6) *How frequently information submissions will be required:* One time.

(7) *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:* See the chart below.

(8) *Type of request:* New.

(9) *The names and telephone numbers of an agency official familiar with the proposal:* Janice D. Rattley, Office of Public and Indian Housing, (202) 708–1800.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 17, 1991.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Formula Characteristics Report.

Office: Office of Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: This new information collection is required by the Comprehensive Grant Program which will be implemented for PHAs/IHAs with 500 units or more in FY 1992 and for PHAs/IHAs with 250 or more units beginning in FY 1993. The information is necessary to determine as eligible PHA's/IHA's formal share of the national allocation.

Form Number: None.

Respondents: Public and Indian Housing Authorities;

Frequency of Submission: One Time.

Fiscal year	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
92	407	1	407	7.0	2,849
93	477	1	447	2.5	1,117.5
Total Estimated Burden Hours:					3,966.50

Total Estimated Burden Hours: 3,966.50.

Status: New.

Contact: Janice D. Rattley, HUD (202) 708-1800;

Jennie Main, OMB (202) 395-6800.

Dated: October 17, 1991.

Supporting Statment for Request for OMB Approval of Data Validation and Collection

A. Justification

1. Section 14 of the U.S. Housing Act of 1937, as amended by section 119 of the Housing and Community Development (HCD) Act of 1987 established the Comprehensive Grant Program (CGP), which provides for the allocation of modernization funds to larger Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) on the basis of a formula. Section 509 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) established the formula allocation methodology for the program.

Beginning in FY 1992, PHAs/IHAs that own or operate 500 or more dwelling units will participate in the CGP. Beginning in FY 1993, PHAs/IHAs that own or operate 250 or more dwelling units will participate in the CGP. PHAs/IHAs below the threshold for participation in the CGP will remain in the competitive Comprehensive Improvement Assistance Program (CIAP).

The Department of Housing and Urban Development (HUD) published a proposed rule on the CGP in the **Federal Register** dated April 26, 1991, with a sixty day comment period, and anticipates the publication of the final rule during the month of November. In order to determine an applicable PHA's/IHA's formula share of the national allocation, HUD will use the best available data on the backlong and accrual needs of public housing developments and objectively measurable data on PHA/IHA characteristics (including PHA/IHA-wide data and data on individual developments) and community characteristics.

The objectively measurable data to be used in both the backlog and accrual formulas is specified in the legislation establishing formula funding of modernization (copy attached). The legislation took these formula elements directly from the HUD Report to Congress on Alternative Methods for Funding Public Housing Modernization. The characteristics of these formula elements were presented in this report, and also included in the preamble to the proposed rule implementing the Comprehensive Grant Program (copy attached). The data requested in these forms is the minimum needed to run the formula and develop formula shares of modernization need for purposes of the CGP.

HUD currently has two data base systems; (1) System for Management Information Retrieval (SMIRPH) for PHAs, and (2) Management Information Retrieval System (MIRs) for IHAs, which contain relevant information regarding PHAs/IHAs characteristics. HUD plans to use these two data bases to the extent feasible to provide for running the formula.

In order to ensure that the information in SMIRPH and MIRS is current and accurate, and to capture the additional information nescessary for determining a PHA's/IHA's formula allocation, HUD will generate the Comprehensive Grant Formula Characteristics Report from these systems and transmit it to the PHA/IHA for validation. All elements, except those denoted by an asterisk, will be provided on the computer generated report. The PHA/IHA will review the information contained therein and make corrections on the formats, as applicable. Where there is an asterisk for a particular element, the PHA/IHA will be asked to provide the information (subject to HUD validation) for that element on the initial report. Subsequently, this additional information will be incorporated into the National data base. The PHA/IHA will return the report correction, as applicable.

As a condition for receiving CGP funding except funding for emergencies, the PHA/IHA will be required to submit a comprehensive plan, which contains: (1) A comprehensive assessment of physical needs; (2) a comprehensive assessment of management needs; (3) a demonstration that completion of physical and management improvements will ensure long-term physical and social viability of each project at a reasonable cost and (4) an action plan which is the schedule of improvements to be funded over 5 years. In order for a PHA/IHA to plan effectively, HUD must inform it of its funding amount as early as possible in the FY.

Although the CGP rule will not be final until November, 1991, we are requesting your review and approval of the collection and validation of information specified on the enclosed forms.

The requested information has no impact on policies regarding the program and is consistent with the requirements of the NAHA.

We would greatly appreciate your review and approval within seven days, as this will enable the Department to obtain and validate the necessary information, use the date to determine a PHA's/IHA's preliminary funding allocation for FY 92, (for planning purposes), and transmit the estimated dollar amounts to the PHA/IHA early in January, 1991. This will greatly facilitate the PHA's/IHA's planning process for submission of its Comprehensive Plan in June, 1992.

2. The collected/validated information will be used to satisfy statutory requirements for providing funding to PHAs/IHAs on a formula basis. Inaccurate data relative to characteristics of PHAs/IHAs could result in inequitable funding allocations.

3. We do not know of any improved information technology to reduce burden.

4. All required information was closely examined to avoid duplication.

5. HUD will use available data in order to provide funding to PHAs/IHAs on a formula basis. PHAs/IHAs will be required to verify the information to ensure that it is current and accurate and to supply data elements during the initial year of its participation in the program.

6. The collection of this information does not involve small businesses. Beginning in FY 1992, smaller PHAs/IHAs, which own or operate less than 500 dwelling units, will continue to compete for assistance under CIAP, as set forth in 24 CFR part 968, subpart B. Beginning in FY 1993, PHAs/IHAs which own or operate less than 250 dwelling units will continue to compete for assistance under CIAPP.

7. The information collection/validation cannot be collected less frequently.

8. There are no special circumstances that requires the collection to be conducted in a manner which is inconsistent with the guidelines in 5 CFR 1320.6.

9. Interest Groups and PHA/IHA representatives were consulted extensively during preparation of the proposed rule, and have been consulted regarding the final rule. The characteristics of these formula elements were presented in the report to Congress referenced above and in the proposed rule. There were no public comments regarding this provision of the rule and language will be included in the final rule regarding this requirement.

10. There is no assurance of confidentiality provided to PHAs/IHAs. All information collections are subject to resident and local government

consultation requirements and are available for inspection by the public.

11. There is no personal or sensitive information included in the information collection.

12. There is no additional cost to the Federal Government or the respondents.

13. See attached Summary of Burden Hours.

14. The burden hours associated with this request are totally attributable to information required for implementing a new program.

15. Not applicable. There are no plans to publish the information collection for statistical use.

B. Collection of Information Employing Statistical Methods

Not applicable.

COMPREHENSIVE GRANT PROGRAM BURDEN HOURS

Description of information collection	Fiscal year	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Formula Characteristics Report	92	968.315 905.669	407	1	407	7.0	2,849
	93	968.315 905.669	477	1	47	2.5	1117.5
Total Estimated Burden Hours							3,966,50

BILLING CODE 4210-33-M

PROJECT LEVEL INFORMATION

Housing Authority Name:
HA Code:

Executive Director Concurrence:

Project Name:

Project Number:

Development Type: **CONVENTIONAL**

Number of Buildings	Scattered Site	Structure Type	DOFA Date
* [1]	* [2]	* [3]	

HA Corrections:

Number of Units							
0 BR	1 BR	2 BR	3 BR	4+ BR	Total	City Code	County Code

HA Corrections:

* [1] - Supplied by IHAs * [2] - Supplied by PHAs and IHAs * [3] - Supplied by PHAs

PROJECT LEVEL INFORMATION

Housing Authority Name:
HA Code:

Executive Director Concurrence:

Project Name:

Project Number:

Development Type: **ACQUISITION**

Number of Buildings	Scattered Site	Structure Type	DOFA Date	Year Constructed	Total Rehab Costs
* [1]	* [2]	* [3]		* [4]	

HA Corrections:

Number of Units						City Code	County Code
0 BR	1 BR	2 BR	3 BR	4+ BR	Total		

HA Corrections:

* [1] - Supplied by IHAs * [2] - Supplied by PHAs and IHAs * [3] - Supplied by PHAs * [4] - Optional for PHAs/IHAs to supply

PROJECT LEVEL INFORMATION

Housing Authority Name:
HA Code:

Executive Director Concurrence:

Project Name:

Project Number:

Development Type: **MUTUAL HELP**

Number of Buildings	Scattered Site	Structure Type	DOFA Date	Original Number of Units	Units Conveyed	Units funded for Comprehensive Modernization
* [1]	* [2]	* [3]				* [1]

HA
Corrections:

Number of Units

1 BR	2 BR	3 BR	4+ BR	Total	City Code	County Code

HA
Corrections:

* [1] - Supplied by IHAs * [2] - Supplied by PHAs and IHAs * [3] - Supplied by PHAs

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-010-02-4320-02]

Craig Colorado Advisory Council Meeting

Time and Date: 10 a.m., December 11, 1991.

Place: BLM—Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Status: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Matters to be Considered:

1. Yampa Valley Alliance.
2. Craig District Recreation Strategy.
3. Mountain bike proposals in the Craig District.

Contact Person for More Information: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129, Phone: (303) 824–8261.

Dated: October 15, 1991.

Rich Burns,

Acting District Manager.

[FR Doc. 91–25472 Filed 10–22–91; 8:45 am]

BILLING CODE 4310-JB-M

[CA-060-4212-11; CACA 26261]

California Desert District, Notice of Realty Action, Classification of Public Lands for Recreation and Public Purposes, Serial Number CACA 2661, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action CACA 26261, Classification of Public Land as Suitable for Lease/Conveyance for Public Purposes.

SUMMARY: The following described public land in San Bernardino County, California has been examined and found suitable for classification for lease or conveyance to the Barstow Public Cemetery District under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.);

San Bernardino Meridian, California

T. 10 N., R. 1 W.

Sec. 30, SW¼NW¼SE¼, and portion of N½SW¼ (un-numbered lot);

Containing 23.560 acres.

The Barstow Public Cemetery District, established as an independent special district on May 19, 1947 by resolution of the San Bernardino County Board of Supervisors under the provisions of Division 8, Part 4 of the Health and Safety Code of the State of California, has filed an application to lease with the option to purchase the above described public lands. The Barstow Public Cemetery District proposes to use the land for expansion of the existing Mountain View Memorial Park, located on adjacent land owned by the District. The public land will be leased during the development phase. Upon substantial compliance with approved plans of development and management, and upon approval of a cadastral survey of the leased area, the land will be conveyed.

The land is not needed for Federal purposes. Lease and subsequent patent under the Recreation and Public Purposes Act is in the public interest and consistent with the California Desert Conservation Area Plan as amended. The land is situated near a significant population center, the site is conveniently accessible by paved County road, and the needed support facilities and equipment needed for cemetery operation are in place at the adjacent Mountain View Memorial Park. The site is physically suitable for the proposed use.

The terms and conditions applicable to a lease or conveyance are:

A. Reservations to the United States.

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. The United States will reserve all mineral deposits in the land together with the right to prospect for, mine and remove such mineral deposits under applicable law.

B. The public land will be leased or conveyed subject to valid existing rights including:

1. Those rights for a public highway (Irwin Road maintained by the County of San Bernardino) established under the principles of Revised Statute 2477 (formerly 43 U.S.C. 932).

2. Those rights for construction, operation and maintenance of the "Bicycle Lake" 33kV electric distribution line granted to Southern California Edison Company, its successors or assigns, by right-of-way Serial No. CALA 054906, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961).

3. Those rights for construction, operation and maintenance of the "Television Amplifier" 4kV electric distribution line granted to Southern California Edison Company, its successors or assigns, by right-of-way Serial No. CALA 0153800, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961).

4. Those rights for construction, operation and maintenance of an aerial "25 pair" telephone cable granted to Continental Telephone Company of California, its successors or assigns, by right-of-way Serial No. CACA 20095, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

The public land parcel to be leased is described by a metes and bounds survey submitted by the applicant. The leased parcel can be conveyed only upon the approval of a cadastral survey description of the parcel.

Upon publication of this notice in the **Federal Register**, the public land described above is segregated from all other forms of appropriation under the public land laws including the mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of forty-five (45) days from the date of publication of this notice, interested parties may submit comments regarding the propose lease conveyance of the lands, to the Area Manager, Barstow Resource Area, 150 Coolwater Lane, Barstow, California 92311, (619) 256–3591. Any adverse comments will be reviewed by the District Manager, California Desert District. In the absence of any adverse comments, this classification will become effective sixty (60) days from the date of publication of this notice.

Dated: October 1, 1991.

Karla K.H. Swanson,

Area Manager.

[FR Doc. 91–24452 Filed 10–22–91; 8:45 am]

BILLING CODE 4310-40-M

[OR-130-02-4111-08: G2-005]

Spokane District Office; Availability of the Draft Spokane District Resource Management Plan Amendment/EIS Supplement for Fluid Minerals

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: This plan amendment supplements the Spokane District RMP/EIS and Record of Decision of May, 1987. It addresses the leasing of all the Federal Mineral Estate in Eastern Washington except for land administered by the U.S. Forest Service and Indian Lands. Other resource programs addressed in this plan include off road vehicle designations, and special management areas. Some administrative changes were also stated in this plan amendment along with a restatement of the Spokane District's Land Tenure Adjustment Policy.

DATES: This draft plan will be available for public review and comment for 90 days from October 18, 1991, until January 16, 1992. No public meetings are scheduled at this time, however, if a need is identified during the comment period, one will be scheduled. Public notification of the scheduled time and place would be made at least 15 days in advance through the local news media.

ADDRESSES: Comments should be sent to: Spokane District Manager, Bureau of Land Management, Department of the Interior, East 4217 Main Avenue, Spokane, Washington 99202.

For further information or copies of this Resource Management Plan Amendment/Environmental Impact Statement Supplement Contact: Gary Yeager, RMP Amendment Team Leader, Spokane District Office, 4217 East Main Avenue, Spokane, Washington 99202.

SUPPLEMENTARY INFORMATION:

Alternative 1 (Existing Plan)

This alternative consists of continued implementation of the RMP without allowing for adjustments in land management decisions (i.e., ORV designations and additional ACEC proposals) based on new information or policy changes. Reconfiguration of management areas is included in this alternative.

Oil and Gas Leasing and Development—This is potentially the least restrictive leasing program the BLM would legally be permitted to implement. Approximately 1.11 million acres of public land and subsurface mineral estate would be open to leasing subject to Standard Leasing Terms and Conditions.

Areas of Critical Environmental Concern (ACEC)—The 12 currently designated ACECs would continue to be managed to preclude land uses that could potentially damage special resource values. No new ACECs would be nominated for designation.

Off Road Vehicle (ORV) Designations—ORV designations would remain as described in the 1987 RMP Spokane District Record of Decision. All 21,000 acres of land acquired since completion of the RMP would remain open to ORV use.

Alternative 2 (Amended Plan)

This alternative addresses BLM's revised guidelines for fluid mineral leasing and development, and also new prescriptions (i.e., ORV designations and additional ACEC nominations) derived from recommendations of BLM staff and the general public.

Oil and Gas Leasing and Development—Oil and gas resources would be leased with Standard Terms and Conditions as well as additional leasing stipulations to protect other resources and values. The new stipulations are derived from two sources: the existing stipulations and stipulations developed during this plan amendment process. The RMP includes mineral resources of lands managed by other surface management agencies. Therefore, any leasing recommendations made by BLM must take into consideration the missions of these agencies, their policies and restrictions on oil and gas activities, existing withdrawals, and limits imposed by regulations and Congress.

Areas of Critical Environmental Concern—Under this alternative four areas would be proposed for ACEC designation; Coal Creek, Cowiche Canyon, Little Vulcan Mountain, and Yakima River Canyon. Coal Creek is being nominated because it contains habitat for a Bureau Sensitive Plant Species, Cowiche Canyon is nominated for its unique botanical and recreational values, Little Vulcan Mountain is nominated because it provides important habitat for a Bureau Sensitive Animal Specie, and Yakima River Canyon is nominated for its recreational, botanical, wildlife and scenic values.

Two existing ACEC designations, Webber Canyon and Roosevelt Slope, would be revoked or rescinded. Webber Canyon ACEC designation would be revoked because evaluations subsequent to its designation by both contract paleontologists and district resource specialists, indicated that there were no significant paleontological resource values at this site, and that returning this area to multiple use would not result in any deterioration of the values that are present. Roosevelt Slope ACEC was designated because it contained habitat for a Bureau sensitive specie Astragalus misellus v. pauper. Subsequent evaluations or inventories revealed that this specie is more common than initially thought, and because there are no existing land uses that would jeopardize its habitat.

Off Road Vehicle Designations—Most of the ORV designations made in the 1987 RMP Record of Decision would not be changed. Only those areas where new information indicates that additional restrictions are necessary to protect resource values, would limitations be proposed. The specific changes being proposed are as follows: In the Yakima River Canyon and Upper Crab Creek Management Areas, ORVs are limited to designated roads and trails (19,200 acres); In the Okanogan Management Area North of the Similkameen River, ORVs would be limited to designated roads and trails on another 4,200 acres.

Dated: October 11, 1991.

Joseph K. Buesing,

District Manager.

[FR Doc. 91-25447 Filed 10-22-91; 8:45 am]

BILLING CODE 4310-33-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: The proposed information collection is for use by the Commission in connection with investigation No. 332-313, Tuna: Current Issues Affecting the U.S. Industry, instituted under the authority of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332).

SUMMARY OF PROPOSAL:

1. *Number of forms submitted:* One.
2. *Title of form:* Tuna: Current Issues Affecting the U.S. Industry—Questionnaire for U.S. Tuna Boat Owners.
3. *Type of request:* new.
4. *Frequency of use:* Nonrecurring.
5. *Description of respondents:* Firms or individuals that own tuna fishing boats.
6. *Estimated number of respondents:* 50.
7. *Estimated total number of hours to complete the forms:* 500
8. Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of any individual firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the proposed form and supporting documents may be obtained from Roger Corey (tel. no. 202-202-3327) or Doug Newman (tel. no. 202-205-3328) of the Commission's staff. Comments about the proposal should be directed to the office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Ms. Lin Liu, Desk Officer for U.S.

International Trade Commission. Any comments should be specific, indicating wnich part of the questionnaire is objectionable and describing the problem in detail. If you anticipating commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent within two weeks of the date this notice appears in the **Federal Register**. Ms. Liu's telephone number is 202–395–7340. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 500 E Street SW., Washington, DC 20436).

Hearing-impaired individuals are advised that informaiton on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Issued: October 17, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–25508 Filed 10–22–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 303–TA–22 (Preliminary) and 731–TA–527 (Preliminary)]

Extruded Rubber Thread From Malaysia

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to sections 303(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1303(a) and 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Malaysia of extruded rubber thread,[2] provided for in heading 4007.00.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Malaysia and sold in the United States at less than fair value (LTFV).

Background

On August 29, 1991, petitions were filed with the Commission and the Department of Commerce by North American Rubber Thread Co., Inc., Fall River, MA, alleging that an industry in the United States is materially injured by reason of subsidized and LTFV imports of extruded rubber threat from Malaysia. Accordingly, effective August 29, 1991, the Commission instituted countervailing duty and antidumping investigations Nos. 303–TA–22 (Preliminary) and 731–TA–527 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 5, 1991 (56 FR 43938). The conference was held in Washington, DC, on September 19, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on October 15, 1991. The views of the Commission are contained in USITC Publication 2441 (October 1991), entitled "Extruded Rubber Thread from Malaysia: Determination of the Commission in Investigations Nos. 303–TA–22 (Preliminary) and 731–TA–527 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: October 16, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–25510 Filed 10–22–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 701–TA–310 (Preliminary)]

Termination Magnesium From Norway

AGENCY: United States International Trade Commission.

ACTION: Notice of termination of countervailing duty investigation No. 701–TA–310 (Preliminary).

SUMMARY: On September 25, 1991, the U.S. Department of Commerce notified the U.S. International Trade Commission under section 702(c) of the Tariff Act of 1930 (19 U.S.C. 1671a(c)) of its dismissal of a countervailing duty petition and termination of proceeding regarding imports of primary magnesium from Norway. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), investigation No. 701–TA–310 (Preliminary) concerning imports of primary magnesium [1] from Norway is terminated.

EFFECTIVE DATE: September 26, 1991.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained 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.

SUPPLEMENTARY INFORMATION:

Background.—The U.S. International Trade Commission instituted investigation No. 701–TA–310 (Preliminary) on September 5, 1991, following a petition filed by Magnesium Corp. of America (MagCorp), Salt Lake City, UT, alleging that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Norway of primary magnesium, that are alleged to be subsidized by the Government of Norway.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: October 17, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–25507 Filed 10–22–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–517 (Final)]

Refined Antimony Trioxide From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The merchandise covered by these investigations is vulcanized rubber thread obtained by extrusion, of stabilized or concentrated natural rubber latex, of any cross-sectional shape, measuring from 0.18 millimeter (0.007 inch or 140 guage) to 1.42 millimeters (0.056 inch or 18 guage) in diameter.

[1] The merchandise covered by this investigation was primary magnesium whether prize pure or alloyed. Pure magnesium is provided for in subheading 8104.1100.00 of the Harmonized Tariff Schedule of the United States (HTS), and is defined as unwrought magnesium containing at least 99.8 percent magnesium by weight. Magnesium alloys are provided for in subheading 8104.1900.00 of the HTS, and are defined as unwrought magnesium containing less than 99.8 percent magnesium by weight, with magnesium being the largest metallic element in the alloy in weight.

antidumping investigation No. 731–TA–517 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of refined antimony trioxide,[1] provided for in subheading 2825.80.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: October 7, 1991.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202–205–3189), 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.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of refined antimony trioxide from the People's Republic of China are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on April 25, 1991, by the Coalition for Fair Trade in Refined Antimony Trioxide.

Participation in the investigation and public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on December 9, 1991, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on December 19, 1991, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 13, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 17, 1991, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is December 16, 1991. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is December 31, 1991; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before December 31, 1991. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: October 16, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–25511 Filed 10–22–91; 8:45 am]

BILLING CODE 7020–02–M

[1] For purposes of this investigation, refined antimony trioxide (also known as antimony oxide) is a crystalline powder with the chemical formula Sb_2O_3. The subject refined antimony trioxide includes blends with organic or inorganic additives comprising 20 percent or less of the blend by volume or weight. Crude antimony trioxide (antimony trioxide having less than 98 percent Sb_2O_3) is excluded.

AGENCY: United States International Trade Commission.

ACTION: Request for public comment.

SUMMARY: The Commission is soliciting views and comments from interested parties and agencies concerning proposals to amend the international Harmonized System, including the nomenclature, rules of interpretation, and section and chapter notes. Specific proposals thereon will be reviewed for potential submission to the Customs Cooperation Council (CCC).

EFFECTIVE DATE: October 31, 1991.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (202–205–2604).

BACKGROUND: The Review Subcommittee of the Harmonized System Committee of the CCC is entering the final phase of its current review and possible revision of the international Harmonized System. The Commission is seeking the views of interested parties for use in developing U.S. proposals for changes to that nomenclature system. The Commission has previously issued similar notices in connection with this review (See 54 HR 30284, July 19, 1989; 55 FR 1736, January 18, 1990; and 56 FR 873, January 9, 1991).

This notice does not institute a formal Commission investigation. It is issued pursuant to the Commission's continuing authority to develop technical proposals jointly with the U.S. Customs Service and the Bureau of the Census. (See section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (the Act) (19 U.S.C. 3011)). The Commission is the lead agency for U.S. consideration of proposed changes to the international Harmonized System. (See United States Trade Representative Notice, 53 FR 45646, November 10, 1988).

The comments submitted to the Commission should be limited to statements of problems and specific proposals for changes in the international Harmonized System, including the General Rules of Interpretation, the international section and chapter notes, and the nomenclature through the 6-digit level. Comments should be prepared with a view toward ensuring that the Harmonized System keeps abreast of changes in technology and in patterns of international trade. Proposals for changes to the Explanatory Notes (which are to be taken up by the Harmonized System Committee separately) or in national-level provisions (including U.S. 8-digit subheadings, statistical reporting numbers, and rates of duty) are not being considered in this process.

SCHEDULE FOR REVIEW: The Review Subcommittee is scheduled to examine Harmonized System chapters 1–24, 41–49, and 91–97, during two sessions, one in September 1992 and the other in January 1993. The Review Subcommittee will make recommendations to the Harmonized System Committee, which in turn will submit its decisions to the Council in mid-1993 for final adoption in early 1994. These modifications adopted by the CCC would enter into force on January 1, 1996.

REQUEST FOR COMMENTS: The Commission will accept and consider submissions relating to chapters 1–24, 41–49, and 91–97 beginning immediately and continuing through February 28, 1992.

WRITTEN SUBMISSIONS: Interested parties should file written submissions by February 28, 1992. A signed original and fourteen (14) copies should be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436. All written submissions except for confidential business information will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m., weekdays) in the Office of the Secretary of the Commission.

Any information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Hearing-impaired persons are advised that information on this matter can be obtained by contacting our TDD terminal on 202–205–1810.

Issued: October 16, 1991.
By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–25509 Filed 10–22–91; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Explosives Technologies International, Inc. (ETI), Rockwood Office Park, Bldg. #1, 501 Carr Rd., Wilmington, DE 19809.

2. Wholly-owed subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Blastrite Services Inc. Incorporated—SC
(ii) Atlanta Explosives, Inc. Incorporated—GA
(iii) Beattie Explosives, Inc. Incorporated—ID
(iv) Southern Explosives Corp. Incorporated—KY
(v) Contract Carrier, Inc. Incorporated—MO
(vi) Keystone Explosives, Inc. Incorporated—PA
(vii) ETI of Ohio, Inc. Incorporated—OH
(viii) ETI of California, Inc. Incorporated—CA
(ix) DECO Services, Inc., dba, Danbury Explosives, dba, Commonwealth Explosives. Incorporated—CT
(x) Explosives Energy Inc., dba Arkansas Explosives Incorporated—AR
(xi) Explo-Tech Inc. Incorporated—PA
(xii) ACE Explosives ETU Ltd. Incorporated—Canada

B. 1. Parent corporation and address of principle office: H.J. Heinz Company, Inc.; Heinz U.S.A., a division of H.J. Heinz Company, World Headquarters, 1062 Progress Street, Pittsburgh, Pennsylvania 15212–5990. The entity providing the Compensated Intercorporate Hauling will be Ore-Ida Foods, Inc., 220 West Park Center Blvd., Boise, Idaho 83706.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation: H.J. Heinz Company, Inc., Heinz U.S.A., a division of H.J. Heinz Company; Chef Francisco, a division of H.J. Heinz Company, Pennsylvania; Escalon, Delaware; Portion Pac, Inc., Ohio; Weight Watchers International, Inc., Virginia; Weight Watchers Food Company, Delaware; Cardio-Fitness Corporation, Delaware; The Pro-Mark Companies, Inc., Oklahoma; Heinz Nutrition Products, Inc., Delaware; Heinz Venture Group, Ltd., Delaware; Ore-Ida Foods, Inc.; Delicious Foods, a division of Ore-Ida; Oregon Farms, a division of Ore-Ida, Delaware; Ore-Ida Vended Products, Inc., Delaware; Gagliardi Bros., Inc., Pennsylvania; Bavarian Specialty Foods, California; Celestial Farms, Inc., Wisconsin; Continental Delights, Delaware; H.J. Heinz Company of Canada, Ltd., Canada; Pestritto Foods, Inc., New Jersey; Pestritto Foods of Oklahoma, Inc., New Jersey; Pro Pastries, Inc., Canada; Shady Maple Farms, Canada; Olmstead Foods, Limited, Canada; W.P. Foods, Inc., Canada; Deliteful Delicacies, Inc., New Jersey; Tasty Frozen Products, Inc., Kansas; Market Managers Corporation, Delaware; Star-Kist Foods, Inc.; Star-Kist Seafood Company, a division of Star-Kist Foods, Inc.; Heinz Pet Products Company, a division of Star-Kist Foods, Inc., California; California Home Brands Holdings, Inc., California; and Mastar, Inc., Delaware.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–25466 Filed 10–22–91; 8:45 am]

BILLING CODE 7035–01–M

[I.C.C. ORDER NO. P–112]

Passenger Train Operation

To: Indiana Harbor Belt Railroad Company.

The National Railroad Passenger Corporation (AMTRAK) has established through passenger train service between Chicago, Illinois and various destinations. Many of these train

operation require the use of tracks and other facilities of the Consolidated Rail Corporation (CR). CR's main line was ordered out of service by the Fire Department of the City of Hammond, Indiana, due to a leaking propane tank car near the tracks of CR. An alternate route is available via the Indiana Harbor Belt Railroad Company (IHB) between Colehour Junction, Illinois and Calumet Park, Indiana.

It is the opinion of the Commission that such operations are necessary in the interest of the public and the commerce of the people; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, (a) Pursuant to authority vested in me by order of the Commission, decided January 13, 1986, and the authority vested in the Commission by Section 402(c) of the Rail Passenger Service Act of 1970 (45 USC 562(c)), the Indiana Harbor Belt Railroad Company is directed to operate trains of the National Railroad Passenger Corporation over its line between Colehour Junction, Illinois and Calumet Park, Indiana to permit a rerouting around a leaking tank car of hazardous material.

(b) In executing the provisions of this order, the common carriers involved shall proceed even if no agreements or arrangements may now exist between them with reference to the compensation terms and conditions applicable to said operations. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of said carriers in accordance with pertinent authority conferred upon it by the Interstate Act and by the Rail Passenger Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 12:30 p.m., (EDT) September 24, 1991.

(e) *Expiration date.* The provisions of this order shall expire at 12:30 p.m. (edt), September 25, 1991, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon the Indiana Harbor Belt Railroad Company and the National Railroad Passenger Corporation, and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, September 24, 1991, by Bernard Gaillard, Agent.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-25467 Filed 10-22-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31947]

Lackawanna County Railroad Authority; Purchase and Operation Exemptions, Lackawanna Railway, Inc. (Scranton Cluster)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–11344 the purchase by Lackawanna County Railroad Authority of a 2.0-mile line in Scranton, PA, and the continued operation of the line by its current owner, Lackawanna Railway, Inc. The exemptions are subject to employee protective conditions and an historic preservation condition.

DATES: The exemptions are effective on October 18, 1991. Petitions to reopen must be filed by November 7, 1991. Petitioner shall submit to this Commission by October 28, 1991, verification of the fact that the proposed action will not cause any operational changes that exceed the thresholds established in 49 CFR 1105.7(e)(4) or (5).

ADDRESSES: Send pleadings referring to Finance Docket No. 31947 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: John D. Heffner, Esq., Suite 1107, 1700 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: October 15, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-25468 Filed 10-22-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 523–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information

Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics.
National Longitudinal Survey of Labor Market Experience of Youth.
1220-0109.
Annually.
Individuals or households.
9050 responses; 9050 total hours; 1 hour per response; 1 form.
The information provided in this survey will be used by the Department of Labor and other government agencies to help understand and explain the employment, unemployment, and related problems faced by young men and women in this age group.

Extension

Departmental Management—Assistant Secretary for Policy.
Determination of the Shortage Number Under Section 210A of the Immigration and Nationality Act.
1225-0050.
On occasion.
Individuals or households; Federal agencies or employees.
1 respondent; 8 hours per response; 8 total hours.
Information is needed so the Secretaries of Agriculture and Labor can make a determination on the request by respondents for (1) an emergency increase in the "shortage number,"—the basis for admitting additional aliens to work in seasonal agriculture, or (2) a decrease in the work days required of certain aliens to maintain legal status.
Employment Standards Administration.
Request for Employment Information.
1215-0105; CM-1027.
On occasion.
Businesses or other for profit; small businesses or organizations.
1,000 respondents; 250 total hours; .25 hrs. per response; 1 form.
This form is used to collect information regarding Federal employees' wage earning capacities. Information is necessary for determination of continued eligibility for compensation payments under FECA.
Vehicle Mechanical Inspection Report for Transportation Subject to Department of Transportation Requirements; Vehicle Mechanical Inspection Report for Transportation Subject to Department of Labor Safety Standards.
1215-0036; WH 514 and WH 514a.
Annually.
Individuals or households; Farms; Businesses or other for profit; Small businesses or organizations.
1,300 respondents; 2,925 total hours; 45 min. per response; 2 forms.
The Migrant and Seasonal Agricultural Protection Act requires any person who intends to transport workers to submit a statement identifying the vehicle used and proof that such vehicle conforms to certain safety requirements.

Signed at Washington, DC, this 18th day of October, 1991.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 91-25530 Filed 10-22-91; 8:45 am]

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Employment and Training Administration

Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law pertaining to unemployment insurance as part of the fulfillment of its role in administration of the Federal-State unemployment insurance system. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to State employment security agencies (SESAs). The UIPLs described below are published in the Federal Register in order to inform the public.

Unemployment Insurance Program Letter No. 29-83

This UIPL transmits to the States a statement of the principles of experience rating that the Department of Labor has derived from its interpretation of the experience rating requirements in section 3303(a)(1) of the Federal Unemployment Tax Act, 26 U.S.C. 3303(a)(1).

Unemployment Insurance Program Letter No. 29-83, Change 1

One of the experience rating principles stated in UIPL 29-83 was the "uniform method" requirement that the experience of all employers be measured over the same period of time using the same factor or combination of factors. This Change 1 to UIPL 29-83 advises the States of the derivation of this principle and its application in several specific cases. Dated: October 10, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

DIRECTIVE: Unemployment Insurance Program Letter No. 29-83.
TO: All State Employment Security Agencies.
Royal S. Dellinger, Administrator for Regional Management.
SUBJECT: General Principles of Experience Rating Under Section 3303(a)(1), FUTA.

1. *Purpose.* To explain the requirements of section 3303(a)(1) of the Federal Unemployment Tax Act (FUTA) to assist States in assuring that employers subject to the experience rating provisions of State laws will qualify for full allowable credits against the Federal unemployment tax.

2. *References.* Section 3303(a)(1), FUTA, Public Law 97-248, and UIPL 4-83.

3. *Background.* Employers subject to the Federal unemployment tax imposed by section 3301, FUTA, are allowed two types of credits against that tax, the limit on which will be 56.4 percent in 1985 and thereafter, if certain requirements of the Federal law are satisfied. "Normal credit" is credit granted to each employer equal to the amount paid as contributions by each to an approved State unemployment fund if the State is certified on October 31, of a taxable year under section 3304(c), FUTA. "Additional credit" is credit allowed to employers with reduced rates of contributions as though they had paid contributions at the highest rate under experience rating or 5.4 percent in 1985 and thereafter, whichever rate is lower.

The objectives of experience rating are (1) the prevention of unemployment by inducing employers to stabilize their operations and thus their employment, and (2) the equitable allocation of the costs of compensable unemployment. Under the first objective, differential contribution rates are taxes to discourage unemployment insofar as employers have the power to control their operations. Under the second objective, sound fiscal policy suggests allocating the cost of doing business to the entities deemed responsible under the State law for those costs.

Section 3303(a)(1), FUTA, prescribes the conditions under which States may permit employers reduced rates of contributions payable to their unemployment funds. Any reduced rate

must be based on the individual employer's experience with respect to unemployment or other factors bearing a direct relation to unemployment risk. The experience must be measured throughout a period of not less than three years (or less for new or newly covered employers). Various factors have been approved over the years for measuring experience, such as benefits paid. To translate such experience into a variable contribution rate, it is necessary to have an index to reflect comparisons among employers' individual experience and then to apply the index to actual individual contribution rates. Finally, contribution rates on taxable wages under a State law are the measure of liabilities for contributions.

The experience of all employers subject to contributions under a State law must be measured by the same factor throughout the same period of time. If there is to be an adjustment to the method of measuring experience or in the computation of rates, the adjustment should apply uniformly; otherwise, there would be a distortion of relative experience.

The standard rate, as defined in section 3303(c)(8), FUTA, is the rate from which variations therefrom are computed. Reduced rates are rates lower than the standard rate computed on the basis of an employer's experience as described above. Experience is the only available method of adjusting revenues to benefit costs, without amendment of a State law. It is also, however, a method of allowing reduced rates which are not commensurate with benefit costs. It is desirable, therefore, to assure that experience rating not only satisfies the requirements of the Federal law, but also that it produces the revenue needed to finance benefit costs adequately.

4. *Action Required.* SESAs should assure that in amending the experience rating provisions of their State laws to satisfy the amendments of the Federal law effective in 1985 that the State law amendments satisfy the requirements of section 3303(a)(1), FUTA.

5. *Inquiries.* Question concerning experience rating should be addressed to the appropriate regional office.

6. *Attachment.* Experience Rating Principles.

Experience Rating Principles

To assist State agencies in their review of their State laws, there is a more detailed explanation below of Federal law requirements on experience rating.

For a State's subject employers to qualify for additional credit, the State law must have been certified by the Secretary of Labor to the Secretary of the Treasury under section 3303(b)(1), FUTA, for a 12-month period ending on October 31 of a taxable year, "with respect to which he finds that reduced rates of contributions were allowable with respect to such 12-month period, only in accordance with the provisions of subsection (a)" of Section 3303, which provides:

(a) State Standards.—A taxpayer shall be allowed an additional credit under section 3302(b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law—

"(1) no reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date;

* * * * *

"For any person (or group persons) who has (or have) not been subject to the State law for a period of time sufficient to compute the reduced rates permitted by paragraphs (1), (2), and (3) of this subsection on a 3-year basis (i) the period of time required may be reduced to the amount of time the person (or group of persons) has (or have) had experience under or has (or have) been subject to the State law, whichever is appropriate, but in no case less than 1 year immediately preceding the computation date, or (ii) a reduced rate (not less than 1 percent) may be permitted by the State law on a reasonable basis other than as permitted by paragraphs (1), (2), or (3)."

All States have for many years maintained pooled funds, that is, funds into which the total contributions of employers contributing thereto are payable, in which all contributions are mingled and undivided, and from which benefits are payable to all individuals eligible therefor from such funds. Paragraphs (2) and (3) referred to in the provisions quoted above relate to types of unemployment fund accounts not used by any State, and are therefore of no concern in this discussion.

Section 3303(a)(1) is implicitly designed to accomplish, through differentiation of rates among employers, one or both of the objectives of experience rating—the promotion of stability of employment and an equitable allocation of the costs of benefits. Since unemployment compensation as a program insures the worker against the risks or hazards of unemployment—hazards which are his rather than the employer's—the terms "unemployment" and "unemployment risk" refer to the unemployment or the unemployment risk of insured individual workers, and the reference in the Federal law to an employer's experience with respect to these is to the employer's experience with respect to factors directly related to his workers' risk of unemployment. Accordingly, the elements of experience rating for granting reduced rates of contributions payable to a pooled fund are described below.

1. Interpretation of "Other Factors Directly Related to Unemployment Risk"

Since the unemployment risk of the worker is the basic phenomenon which is to be measured in any formula for the computation of reduced rates of contributions to a pooled fund, the factors referred to in section 3303(a)(1) are limited to those basic elements which may reasonably be counted for the purpose of establishing the frequency or the frequency and severity of an employer's experience with the impact of unemployment upon his workers. For the purpose of determining the relative significance of the employer's experience, it will of course be necessary to relate such experience to the payroll or other measurement of exposure to the insured risk.

The following types of experience now or previously in State laws constitute factors directly related to the unemployment risk of workers, in that measurement of such experience reflects the frequency or the frequency and severity with which the worker of any given employer suffers the impact of unemployment: Benefit payments, separations, compensable separations, benefit wages, and payroll variations, or a combination of such factors.

Experience with any of the foregoing reflects the basic element, the unemployment of the individual worker. Separation is only another name for the initial impact of unemployment upon the individual worker. Compensable separations limit the type of separation counted to those compensable under the unemployment compensation law; benefit payments are compensable separations weighted by the duration of compensable unemployment; and benefit wages are compensable separations weighted by the worker's base-period wages. Of these factors, benefit payments alone give some reflection of the severity as well as the frequency of the impact of unemployment. Weeks or other periods of unemployment, not at present used as factors in any State law, also would reflect severity as well as frequency.

2. Interpretation of "Except on the Basis of His (or Their) Experience"

Rate differentials are essential to any system under which an employer's rate is based on his experience, because only by the use of differentials is there a genuine reflection of the individual experience of an employer. Within the limits of the maximum and minimum rates, the smaller the intervals between the variant rates, the greater the effect of the individual experience upon the rate at which any given employer must pay contributions, i.e., the more nearly is his rate based on his experience with unemployment or other factors bearing a direct relation to unemployment risk. Numerous differentials make the transition from one contribution rate to another more equitable because, if the interval between contribution rates is small, inequities to borderline employers are less than under a system in which the intervals are larger. In other words, using a large number of different contribution rates, with smaller intervals between such rates, would prevent slight variations in employer experience from resulting in large variations in rates assigned to different employers with nearly the same relative experience. Moreover, there may be greater incentive for stabilization if the transition from one rate to another is more possible in a relatively short period of time.

On the other hand, administrative considerations indicate the desirability of some limitation on the number of differentials within the span of the maximum and minimum rates. It is recognized also that the number of reduced rate classes which a State experience rating system should provide, in order to assure suitable reflection of the relative unemployment experience of different employers, may depend on the degree of favorable experience required of an employer under the State law before he can qualify at all for a reduction below the standard contribution rate. In any case, to assure that the differentiation of experience will be reflected in the rates assigned to individual employers, the rate schedule must contain rate intervals that will reasonably reflect their relative experience. A range of rates, for example, from 5.4 to 0.1, but with a highest reduced rate of 2.5 would not permit a reasonable reflection of relative experience.

Although the degree of favorable experience required for a reduced rate is not specified in section 3303(a)(1), it would be desirable (in order that the fund be maintained for its purpose of paying benefits) that there be a minimum standard under the State law to the effect that there must be a favorable relationship between the individual employer's contributions and the benefits attributable to him as a prerequisite to any rate reduction. A reduced rate granted to an employer should be calculated at least to maintain or restore a balance between his contributions and the benefits paid.

A general factor designed to replenish drains upon the fund or to prevent the fund from falling below a prescribed minimum level may require a secondary adjustment in rates which results in a more limited range of rate reductions than would otherwise be accorded. Such an adjustment merely subordinates the operation of the experience rating plan to a more fundamental objective of any unemployment insurance system: The maintenance of a fund adequate to pay benefits. However, when a factor unrelated to the employer's individual experience serves to relax the conditions for reduced rates, the reduced rate of an employer as finally computed may be determined primarily by the general factor and, therefore, cannot be said to be based upon his individual experience. In order to insure that the individual employer's experience is the basic determinant of his reduced rate, reduced rates may not be permitted when the influence of the basic experience factor has been so impaired by combination with factors unrelated to the employer's experience that such employer's own experience is no longer the basic determinant of such employer's reduced rate.

3. Interpretation of Three Years of Experience

Under section 3303(a)(1), the reduced rate under the State law must be based on the employer's experience during not less than the three consecutive years immediately preceding the computation date. Because an employer's experience with unemployment or with a factor directly related to unemployment risk might differ radically from year to year, the minimum three-year requirement, it was thought, will usually provide a more representative measurement. The factors used for the measurement of experience during the three-year period need not be identical for each of the years but one or more of the factors must be used with respect to each year. A period of less than three years is acceptable, if the State law so provides, at State option, for new or newly covered employers, under a 1954 amendment to the experience rating requirements.

Under that amendment, a new or newly covered employer who has not had sufficient experience to satisfy the three-year requirement may be allowed a reduced rate based on experience for a shorter period, but only if he has had at least one year of experience. When the same employer has experience for a longer period, such longer period must be used for computing a rate based on experience until the three-year requirement is satisfied.

Under a 1970 amendment to the experience rating requirements, a new or newly covered employer may be assigned a reduced rate (not less than 1 percent) on any reasonable basis other than his workers' risk of unemployment, until he qualifies for a computed rate based on experience in accordance with the State law. Such a reduced rate not based on experience is permissible under the Federal law only so long as an employer is a new or newly covered employer.

4. Methods of Measuring Experience

The methods used for measuring the experience factor provided in the State law are the methods for allocating responsibility for a worker's unemployment among his employers. They are found in the charging provisions of the State law—provisions which vary widely among States but which may be generally classified into the categories listed below.

(a) *Charging base-period employers proportionately.*—The benefits paid to any individual are charged against each of his base-period employers in the proportion that the wages paid by each employer bear to his total base-period wages. Base-period charging places the measure of an employer's experience with unemployment risk on the same basis as that used for the establishment of a worker's rights to unemployment compensation. The charging of benefits proportionately is equitable and is not subject to the chance factors which arise in the case of charging the most recent employer.

(b) *Charging the most recent employer.*—Those States which have provisions for charging the most recent employer have adopted them on the theory that the worker's most recent employer is responsible for his unemployment, if that unemployment is involuntary on the part of the worker. This theory is based on the assumption that only the proximate cause of unemployment should be taken into consideration in assessing responsibility—that all other causes are remote and undeterminable and, therefore, ineffective as incentives for the stabilization of employment.

(c) *Charging the most recent employer in the base-period.*—The theoretical basis in support of this method is that in most cases the most recent base-period employer is both the worker's most recent employer and his principal base-period employer. The method is also considered administratively simple.

(d) *Charging employers in inverse chronological order.*—The charging of employers in inverse chronological order represents a combination of the theory of charging the most recent employer and the theory that charges should bear some relation to the extent of employment provided by the employer, i.e., the amount of wages earned by the worker with each employer.

The benefit provisions and wage-reporting requirements in most States make this an especially intricate and involved charging procedure, since the information needed for charging is not available until lag and current-quarter wage reports are processed.

(e) *Charging base-period employers in inverse chronological order.*—A modified form of charging employers in inverse chronological order is found in States which charge base-period employers in inverse order, beginning with the most recent employer in the base period.

(f) *Transition from one method of charging to another.*—When a State agency is considering a change in the charging provisions of its law, it is advisable to incorporate in the amendment a statement as to whether the new provisions will be retroactive in effect. If the amendment is not retroactive, then a transition provision should be included to deal with problems arising because of the change from one system to another.

(g) *Noncharging.*—An experience rating plan must measure all of an employer's experience, and not merely selected or partial experience, except under provisions of a State law, at the option of a State, providing for noncharging consistently with Federal law requirements.

After several years of administration of the unemployment compensation program by the States, it appeared to the Social Security Board, the original administrator of the Federal law, that experience rating had a distinct effect upon the provisions in State laws on disqualification for benefits. The Board, as a result, issued on December 29, 1944, an interpretation of the provisions of section 3303(a)(1), FUTA, in Unemployment Compensation Program Letter 78 "to separate, to the extent necessary, the decisions with respect to the worker's rights to benefits from the charging decisions with respect to experience rating. This can be accomplished [the UCPL continued] by noncharging of benefits which may be considered not a reasonable charge against individual employers * * * "

The Board interpreted the Federal law as not requiring—

> that *all* benefits paid be charged as a part of the experience of employers, provided that those which are charged assure a reasonable measurement of the experience of employers with respect to unemployment risk * * *. The test is one of reasonableness in the measurement of each employer's experience in relation to other employers and to the purposes of experience rating. (Original emphasis)
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> In determining the circumstances under which there will be no charging of employers' accounts, it is important to consider the potential quantitative effect of such noncharging upon employers' contribution rates, to the end that the ability of the State's unemployment fund to finance the payment of benefits over a reasonable period of time not be impaired."

UCPL 78 also described specific situations of noncharging that were accepted as consistent with Federal law, such as, in part, "when benefits are paid, without any disqualification, to a worker who has left work voluntarily for good cause not attributable to the employer" and also "when benefits are paid for unemployment immediately after the expiration of a period of disqualification for (a) voluntary leaving without good cause, (b) discharge for misconduct, or (c) refusal of suitable work without good cause." When, later, there was a need for clarification of the phrase "immediately after" in connection with the expiration of a period of disqualification, UCPL 85 was issued on April 16, 1945, to limit noncharging to benefits based on wage credits earned prior to the disqualifying act.

Although particular kinds of noncharging (or adjustments in another factor measuring experience) were acceptable, it was also required under UCPL 78 that the experience rating plan would continue, by the changes to be made, to assure a reasonable measurement of employers' experience with unemployment or unemployment risk. It was also required that an experience rating plan would reasonably measure each employer's experience in relation to other employers and to the purposes of experience-rating.

5. Measurement for Required Period Immediately Preceding Computation Date

Reduced rates must based on an employer's experience during not less than the three consecutive years, or during not less than one year (as provided under the 1954 amendment described above), preceding the computation date. The requirement that the period used must "immediately precede the computation date" results in the use of recent experience as opposed to the possible use of experience so remote as to have little validity in relation to the experience of the employer at the time the rate is computed and for the period with respect to which the rate is effective. Assurance on this point is found in the definition of "computation date" in section 3303(c)(7), FUTA, as follows:

> The term 'computation date' means the date, occurring at least once in each calendar year and within twenty-seven weeks prior to the effective date of new rates of contributions, as of which such rates are computed.

It should be noted that the term is defined not only as the date as of which rates are computed but also as a date which occurs at least once in each calendar year and which is so fixed that the rates determined as of that date must be effective sometime within the 27 weeks which immediately follow that date. In other words, under the Federal requirements for additional credit, a State agency must compute rates at least once a year and must put those rates into effect within a reasonable period of time. The definition does not require that the rates determined as of the computation date be immediately effective because it was recognized that a time lapse between the computation date and the effective date might be desirable for administrative reasons.

6. Beginning of Period of Chargeability

An employer's account first becomes chargeable when the unemployment of a worker who is or has been employed by him could be reflected in the employer's account. The unemployment would be reflected by means of the factor selected in the individual State to measure unemployment risk: benefit payments, benefit wages, or the like, which would be charged to the employer's record.

In States charging base-period employers, an employer would not become chargeable until a calendar quarter in which he had paid taxable wages which could be included in the base period of one of his workers who might become unemployed and eligible.

If the base period consists of the first 4 out of 5 calendar quarters preceding the benefit year, thus providing for a lag quarter, chargeability could not begin until the second quarter following the first quarter of taxable payroll.

7. Continuity of Chargeability

Since additional credit may be granted under section 3302(b) FUTA, only for reduced rates granted on the basis of experience during the three years (or less under the 1954 amendment described above, other than reduced rates granted to new or newly covered employers under the 1970 amendments, immediately preceding the computation date, there must be chargeability throughout that period. Any lapse in chargeability will interrupt the required experience period.

8. End of Period of Chargeability

The requirement for measuring experience throughout the period that immediately precedes the computation date means that not only must all experience be included up to the computation date, but experience that occurs after that date must not be included for that rate year. This prohibition does not preclude the inclusion of charges for benefits paid subsequent to the computation date for unemployment occurring prior to that date. As an example, if a claimant has compensable unemployment during the latter part of December but does not receive his benefit check until January the benefit payments represented by that check could and should be charged to the employer's account even though the computation date is December 31. The important fact is that the unemployment occurred prior to the computation date.

Because of delayed payments due to appeals or other situations beyond the agency's control, as a practical matter it is desirable for the agency to establish a date subsequent to the computation date, as of which information must have been received by the agency if it is to be included in the computation. Such a date is commonly called the cut-off date. State agencies have adopted the practice of including in the charges all benefits for unemployment occurring prior to the computation date if paid before the computation date or within the month following.

9. Exposure to Risk of Unemployment

The extent of unemployment among the workers of any given employer is significant as a measure of the risk of unemployment among his workers only if considered in relation to the number of workers he employs to or another factor which reflects the number of workers employed, a factor which indicates the exposure of those workers to possible unemployment. Obviously, if employer A, with a $100,000 payroll, has $5,000 in benefits charged to his account, the risk of unemployment for the workers in his establishment is greater than the risk in employer B's establishment with the same amount of charges but a $200,000 payroll.

By securing the ratio between each employer's experience with the factor used for measuring unemployment and the measure of size, indices of the relative experience of the employers are established. On the basis of these indices, rates may be assigned in accordance with the relative experience of employers as compared with the experience of other employers. The payroll in terms of dollar amounts is the most common measure of exposure found in State laws.

One year's payroll would have little significance in relation to the benefit payments over a period of three years, since the size of an organization may fluctuate from year to year. For this reason, the usual measure is the average annual payroll for the last three years preceding the computation date. Obviously, it is highly desirable that the period for which the average annual payroll is computed should end with the computation date, since it is important that the payroll used be recent and represent a period comparable to that used for measuring experience. If deviations from this principle are not substantial, no serious objections will be made. Proposals have been made and accepted, for instance, for using a three-year average payroll ending on September 30, in cases in which the computation date was December 31.

10. Secondary Adjustments

The requirement that a reduced rate must be based on the employer's experience makes it necessary to maintain the influence of that experience in the determination of the reduced rate granted to an employer. The measurement of experience may be subjected to adjustments by the application of other factors bearing no relation to an employer's experience only if the basic experience factor has not been so impaired by combination with such other factors that the employer's own experience is no longer the basic determinant of his reduced rate.

A number of States permit an employer to make voluntary contributions. Where the experience factor is reserve balance, that is, the difference between contributions and benefits, sometimes a small additional amount of contributions will qualify an employer for the next lower rate. States which use benefits as the factor can accomplish the same result by permitting employers to make payments which "cancel" benefit charges. Section 3303(d), FUTA, authorizes a State law to permit voluntary contributions to be used in the computation of reduced rates only if such contributions are paid prior to the expiration of 120 days after the beginning of the year for which such rates are effective.

Another secondary factor, used in rate computations under the benefit-wage-ratio formula, is the State experience factor. This is used in benefit-wage-ratio laws. A ratio between each employer's benefit wages and his total payroll is determined. The ratio for total benefit wages and total payrolls for all employers is then determined to get the average percentage in the State, called the State experience factor. The rate an employer receives in any particular year depends in part on this State average experience. It has been held that the use of the State experience factor does not distort the benefit-wage factor as a measure of unemployment risk.

The usual purpose of most other secondary adjustments is to raise rates of all employers when the amount in the State fund falls below a certain danger point fixed by statute. A provision which achieves the same object is the prorating among all employers of benefits which had been "noncharged," that is, paid without being charged to any particular employer's account. A secondary adjustment that results in a reduction of rates has been found not to be an unreasonable distortion of the experience factor if the reduction is the same for all rated employers and if the reduction is not applied to employers not otherwise entitled to a reduced rate based on their own experience.

11. Transfers of Experience

Section 3303(a)(1), FUTA, prescribes the conditions under which a reduced rate of contributions to a pooled fund may be permitted by a State law "to a person (or group of persons) having individuals in his (or their) employ." The term "person" means any legal entity, including an individual, trust or estate, partnership, or corporation. It does not include a State or its political subdivisions. Although most, if not all, State laws contain provisions for group accounts, they are rarely used in practice. The main use of the authority in the Federal law for group accounts is as the legal basis for transfers of experience in certain circumstances.

Experience of an employer may be transferred to the successor, if permitted by State law, where the employing entity or entities are transferred in their entirety to a single legal person who may or may not have been a covered employer prior to the transfer. There may also be a transfer of experience from the predecessor employer to the successor employer who has acquired part of the predecessor's business, in proportion to the payroll or employees assignable to the transferred portion, if there is a clearly segregable and identifiable part of the predecessor's enterprise transferred. If a partial transfer is involved, the predecessor may not be allowed to retain experience assigned to the successor with respect to rate years following the transfer.

12. Types of Experience Rating Plans

Under the general provisions of the experience rating requirements contained in section 3303(a)(1), the provisions of State law on experience rating vary in a number of details. There are, nevertheless, certain common characteristics which may be grouped as four distinct systems currently used by the States, a few of which have combinations of such systems.

a. *Reserve-ratio formula.*—The reserve-ratio was the earliest of the experience rating formulas and continues to be the most popular. It is now used in 32 States. The system is essentially cost accounting. On each employer's record are entered the amount of his payroll, his contributions, and the benefits paid to his workers. The benefits are subtracted from the contributions, and the resulting balance is divided by the payroll to determine the size of the balance in terms of the potential liability for benefits inherent in wage payments. The balance carried forward each year under the reserve-ratio plan is ordinarily the difference between the employer's total contributions and the total benefits received by his workers since the law became effective. The payroll used to measure the reserve is ordinarily the average of the last 3 years.

The employer must accumulate and maintain a specified reserve before his rate is reduced; then rates are assigned according to a schedule of rates for specified ranges of reserve ratios; the higher the ratio, the lower the rate. The formula is designed to make sure that no employer will be granted a rate reduction unless over the years he contributes more to the fund than his workers draw in benefits. Also, fluctuations in the State fund balance affect the rate that an employer will pay for a given reserve; an increase in the State fund may signal the application of an alternate tax rate schedule in which a lower rate is assigned for a given reserve and, conversely, a decrease in the fund balance may signal the application of an alternate tax schedule which requires a higher rate.

b. *Benefit-ratio formula.*—The benefit-ratio formula also uses benefits as the measure of experience, but eliminates contributions from the formula and relates benefits directly to payrolls. The ratio of benefits to payrolls is the index for rate variation. The ratio of benefits to payrolls is the index for rate variation. The theory is that, if each employer pays contributions at a rate which approximates his benefit-ratio, the program will be adequately financed. Rates are further varied by the inclusion in the formulas of three or more schedules, effective at specified levels of the State fund in terms of dollar amounts or a proportion of payrolls or fund adequacy percentage.

Unlike the reserve-ratio, the benefit-ratio system is geared to short-term experience. Only the benefits paid in the most recent three years are used in the determination of the benefit ratios, with rare exceptions.

c. *Benefit-wage-ratio formula.*—The benefit-wage-ratio formula is radically different. It makes no attempt to measure all benefits paid to the workers of individual employers. The relative experience of employers is measured by the separations of workers which result in benefit payments, but the duration of their benefits is not a factor. The separations, weighted with the wages earned by the workers with each base-period employer, are recorded on each employer's experience rating record as benefit wages. Only one separation per beneficiary per benefit year is recorded for any one employer. The index which is used to establish the relative experience of employers is the proportion of each employer's payroll which is paid to those of his workers who become unemployed and receive benefits, i.e., the ratio of his benefit wages to his total taxable wages.

The formula is designed to assess variable rates which will raise the equivalent of the total amount paid out as benefits. The percentage relationship between total benefit payments and total benefit wages in the State during three years is determined. This ratio, known as the State experience factor, means that, on the average, the workers who drew benefits received a certain amount of benefits for each dollar of benefit wages paid, and the same amount of taxes per dollar of benefit wages is needed to replenish the fund. The total amount to be raised is distributed among employers in accordance with their benefit-wage ratios; the higher the ratio, the higher the rate.

Individual employers' rates are determined by multiplying an employer's experience factor by the State experience factor. The multiplication is facilitated by a table which assigns rates which are the same as, or slightly more than, the product of the employer's benefit-wage ratio and the State factor. The range of the rates is, however, limited by a minimum and maximum. The minimum and the rounding upward of some rates tend to increase the amount which would be raised if the rates were computed without the table; the maximum, however, decreases the income from employers who would otherwise have paid higher rates.

d. *Payroll variation plan.*—The payroll variation plan is independent of benefit payments to individual workers; neither benefits nor any benefit derivatives are used to measure unemployment. Experience with unemployment is measured by the decline in an employer's payroll from quarter to quarter or from year to year. The declines are expressed as a percentage of payrolls in the preceding period, so that experience of employers with large and small payrolls may be compared. If the payroll shows no decrease or only a small percentage decrease over a given period, the employer will be eligible for the largest proportional reductions. The payroll variation plans use a variety of methods for reducing rates, usually by an array of declines and by groups or classes.

Directive: Unemployment Insurance Program Letter No. 29–83 Change 1.

To: All State Employment Security Agencies.

From: Donald J. Kulick, Administrator for Regional Management.

Subject: The "Uniform Method" Requirement for Measuring the "Experience" of Employers.

1. *Purpose.* To inform the State agencies of the Federal law requirement that the "experience" of all employers be measured over the same period of time by uniform methods applicable to all employers and to all measures of experience under an approved State experience rating system.

2. *References.* Section 3303(a)(1) of the Federal Unemployment Tax Act (FUTA); Employment Security Memorandum (ESM) No. 9, issued in July 1940; UIPL 24–77, dated April 5, 1977; and UIPL 29–83, dated June 23, 1983.

3. *Background.* UIPL 29–83 transmitted to the States a statement of the principles of experience rating that the Department has derived from its interpretation of the experience rating requirements in section 3303(a)(1) of the FUTA. One of the principles stated in UIPL 29–83 was the "uniform method" requirement that the experience of all employers be measured over the same period of time using the same factor or combination of factors. This Change 1 advises States of the derivation of this principle and its application in several specific cases.

The applicable section of Federal law is section 3303(a)(1), FUTA, which provides, as a condition of employers in a State receiving the additional credit against the Federal unemployment tax that:

(a) *State Standards.*—A taxpayer shall be allowed an additional credit under section 3302(b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law—

(1) No reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date.

The words "his * * * experience" compel a State experience rating system to measure each individual employer's experience. The Department and its predecessor agencies have long held that a uniform method of measuring experience is essential in order to assure that a State's experience rating system measures the experience of each employer relative to the experience of all other employers subject to the State's system, so that each employer's contribution rate may be said to be based upon "his * * * experience." If this "uniform method" were not required, section 3303(a)(1) would have no practical effect as a State could tailor different experience rating requirements for different groups of employers or even single employers.

The known purposes of experience rating include "the promotion of stability of employment and/or a fair allocation of the costs of unemployment compensation." (See ESM No. 9 at 1.) If not for the "uniform method" requirement, these purposes could be circumvented as different applied to different employers would result in an unfair allocation of costs with no resulting stabilization of employment. Even if these purposes were perceived as having minimal relationship to principles of experience rating, there is nevertheless the explicit requirement of section 3303(a)(1), FUTA, that each employer's reduced rate shall be based upon "his * * * experience."

The "uniform method" requirement was first enunciated by the Social Security Board, which was originally charged with assuring that the experience rating requirements of section 3303(a) were met by the States. In an August 5, 1941 meeting, the Board determined that Section 3303(a)(1) (then section 1602(a))—

> Requires that a State law conforming therewith must rate all employers entitled to reduced rates on the basis of their experience during the same specified period with the same single factor (or a combination of factors which taken together constitute a single factor) bearing a direct relation to unemployment risk * * *.

UIPL 29–83 restated and elaborated on the Board's position:

> The experience of all employers subject to contributions under a State law must be measured by the same factor throughout the same period of time. If there is to be an adjustment to the method of measuring experience or in the computation of rates, the adjustment should apply uniformly; otherwise, there would be a distortion of relative experience.

This general rule is applicable to all employers and to all measures of experience under an approved State experience rating system. It was the subject of a 1976 conformity proceeding involving the State of Oregon. Oregon law singled out a certain group of employers to be relieved of charges for benefits paid. (Oregon used benefits paid as its factor for measuring experience.) In his decision, the Secretary stated that;

> The special noncharging provision for food processors under Oregon * * * is violative of section 3303(a)(1) of the Federal Unemployment Tax Act.
> * * * * *

a. The general principle underlying the Department's interpretations of section 3303(a)(1) has been that a State must charge all employers by the same rule over the same period of time.

Therefore, a "uniform method" is required to be used in the measurement of all elements of the "experience" of employers under a State's experience rating system. Only in this manner can there be assurance that each employer's calculated rate is based upon "his * * * experience." See UIPL 24–77 which transmitted the Secretary's decision.

4. *Application.* A conflict with the "uniform method" requirement of section 3303(a)(1), FUTA, would occur if certain employers received differing treatment due to an adjustment to any of the elements in the State's experience rating formula. The uniform method requirement applies to, among others, the following situations:

a. As established in the Oregon conformity case, States which require employers to be charged in certain situations, may not relieve some employers of benefit (or benefit-wage) charges, or make other adjustment to actual charges.

b. States which require contributions paid to be used in computing a reserve ratio, may not permit some employers to receive credit for contributions due, but not paid, or make other adjustments not related to the actual amounts paid into the State unemployment fund. (It should be noted that employers may receive the credit available under section 3302(a), FUTA, only for amounts actually paid into a State unemployment fund. See the Internal Revenue Service regulations at 26 CFR 31.3302 (a)–1 and (a)–3. The Secretary of Labor's annual certification under section 3304(c), FUTA, pertains to the credit permitted under section 3302(a) "only for the amount of contributions paid" into a State unemployment fund.)

c. States may not permit the use of an adjusted payroll for selected employers when the State formula requires the use of actual payroll. This requirement applies whether payroll is a part of the "factor" used in measuring experience, or when payroll is used only as an "exposure" factor in calculating contribution rates. (See the attachment to UIPL 29–83 at 9 for a discussion of this "exposure" factor.)

5. *Action Required.* State administrators are requested to take necessary action to assure that the State law is applied consistently with section 3303(a)(1), FUTA, as interpreted in UIPL 29–83 and this Change 1.

6. *Inquiries.* Please direct inquiries to the appropriate Regional Office.

[FR Doc. 91–25531 Filed 10–22–91; 8:45 am]
BILLING CODE 4510–30–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977

1. Powder Mill Coal Corp.

[Docket No. M-91-83-C]

Power Mill Coal Corporation, Box 124 A, R.D. 1, New Bethlehem, Pennsylvania 16242 has filed a petition to modify the application of 30 CFR 75.1101-8(b) (water sprinkler systems; arrangement of sprinklers) to its Channel No. 1 Mine (I.D. No. 36-01038) located in Armstrong County, Pennsylvania. The petitioner proposes to install a single branch line system above and to one side of the top belt.

2. The Ohio Valley Coal Co.

[Docket No. M-91-84-C]

The Ohio Valley Coal Company, 56854 Pleasant Ridge Road, Alledonia, Ohio 43902 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Powhatan No. 6 Mine (I.D. No. 33-01159) located in Belmont County, Ohio. The petitioner proposes to install a low-level carbon monoxide monitoring system in all belt entries used as intake aircourses.

3. Golden Oak Mining Co.

[Docket No. M-91-85-C]

Golden Oak Mining Company, HC 85, Box 177, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Golden Oak No. 4 Mine (I.D. No. 1558) located in Letcher County, Kentucky. Due to hazardous roof conditions, petitioner proposes to establish evaluation points at specific crosscuts in the return aircourse instead of traveling between the crosscuts.

4. New Warwick Mining Co.

[Docket No. M-91-86-C]

New Warwick Mining Company, 3 North Shaft, R.D. 1, Box 167-A, Mount Morris, Pennsylvania 15349 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Warwick Mine (I.D. No. 36-02374) located in Greene County, Pennsylvania. Due to hazardous roof conditions, petitioner proposes to establish a checkpoint at a certain location instead of traveling the aircourse in its entirety.

5. New Warwick Mining Co.

[Docket No. M-91-87-C]

New Warwick Mining Company, 3 North Shaft, R.D. 1, Box 167-A Mount Morris, Pennsylvania has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Warwick Mine (I.D. No. 36-02374) located in Greene County, Pennsylvania. The petitioner proposes to install a low-level carbon monoxide detection system in all present and future belt entries.

6. Turris Coal Co.

[Docket No. M-91-88-C]

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.329 (bleeder systems) to its Elkhart Mine (I.D. No. 11-02664) located in Logan County, Illinois. The petitioner proposes to use the ventilation system for secondary mining of interior and barrier pillars to control the air passing through mined areas and to continuously dilute and move gases, dust and fumes from all portions of the mined area.

7. ASARCO Inc.

[Docket No. M-91-17-M]

ASARCO Incorporated, Box 440, Wallace, Idaho 83873 has filed a petition to modify the application of 30 CFR 57.14162 (trip lights) to its Galena Mine (I.D. No. 10-00082) and its Coeur Mine (I.D. No. 10-00479) both located in Shoshone County, Idaho. The petitioner proposes to use a motor operator in the operators compartment or a swamper in the second to end car, both equipped with a cap lamp on single pushed or pulled mobile equipment instead of using trip lights.

8. Siskon Gold Corp.

[Docket No. M-91-18-M]

Siskon Gold Corporation, P.O. Box 861, Wrightwood, California 92397 has filed a petition to modify the application of 30 CFR 57.14106 (falling object protection) to its Big Horn Mine (I.D. No. 04-04482) located in San Bernardino, California. The petitioner states that the use of falling object protection structure on the LHD loader could create safety hazards by impacting compressed air lines, high pressure water lines and ventilation ducting.

9. Fletcher Granite Co., Inc.

[Docket No. M-91-19-M]

Fletcher Granite Company, Inc., Groton Road, West Chelmsford, Massachusetts 01863 has filed a petition to modify the application of 30 CFR 56.14211(d) (blocking equipment in a raised position) to its Fletcher Granite Quarry (I.D. No. 19-00008) located in Middlesex County, Massachusetts. The petitioner proposes to assign a second back-up crane operator next to the primary operator to serve as the "dead man" control instead of using the anti-two block and anti-free fall systems on cranes while lifting personnel.

Request of Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 21, 1991. Copies of these petitions are available for inspection at that address.

Dated: October 16, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-25532 Filed 10-22-91; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Application Number D-8361]

Revocation of Prohibited Transaction Exemption (PTE) 81-82 Involving Guaranteed Contract Separate Accounts

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of revocation of existing class exemption.

SUMMARY: This document contains a notice of the revocation by the Department of Labor (the Department) of PTE 81-82. PTE 81-82 contains a final exemption for certain transactions involving separate accounts maintained by life insurance companies in connection with contracts under which the life insurance company either: (1) Guarantees repayment of amounts deposited with it by an employee pension benefit plan, together with accrued interest, on a fixed date, or (2) guarantees payment of a fixed annuity.

EFFECTIVE DATE: The revocation of PTE 81-82 will be effective November 22, 1991.

FOR FURTHER INFORMATION CONTACT: Kay Madsen of the Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 523-8971 (this is not a toll-free number) or Diane Pedulla of the Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523-9597 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the revocation of PTE 81-82 (46 FR 46443, September 18, 1981). PTE 81-82 contains an exemption from

the prohibited transaction restrictions of section 406(a) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code (the Code), by reason of section 4975(c)(1)(A) through (D) of the Code.[1] The exemption provides relief for transactions between a party in interest and a separate account maintained by life insurance companies in connection with contracts under which the life insurance company either: (1) Guarantees repayment of amounts deposited with it by an employee benefit pension plan, together with accrued interest, on a fixed date, or (2) guarantees payment of a fixed annuity. For a more complete discussion of the relief provided by PTE 81–82, interested persons are referred to the exemption itself as published in the **Federal Register** and cited above.

On June 14, 1991, the Department published in the **Federal Register** (56 FR 27543) a notice of pendency of the proposed revocation of PTE 81–82. The notice described the authority pursuant to which the Department proposed to revoke PTE 81–82 and the reasons for the proposed revocation. The notice also invited interested persons to submit written comments on the proposed revocation. The Department received one comment letter requesting that PTE 81–82 be retained to the extent that it affords federal protection to participants and beneficiaries whose pension plans have purchased annuity contracts. In response, the Department points out that under final regulation 29 CFR 2510.3–101, published on November 13, 1986 at 51 FR 41280, when a plan acquires or holds an interest in a separate account of an insurance company, its assets include its investment and an undivided interest in each of the underlying assets of the separate account, unless the separate account is maintained solely in connection with fixed contractual obligations of the insurance company under which the amounts payable, or credited, to the plan and to any participant or beneficiary of the plan (including an annuitant) are not affected in any manner by the investment performance of the separate account. As a result of this exception, such accounts no longer require the relief from the prohibited transaction restrictions granted by this exemption. As the letter raises various concerns about annuities, the Department directs the commentator to the advance notice of proposed rulemaking on annuities published on June 21, 1991 at 56 FR 28638. Accordingly, the Department, having considered the matter, has determined, on the basis of the entire record, to revoke PTE 81–82.[2]

Revocation of Existing Exemption

On the basis of the material referred to in this document and the notice of proposed revocation of PTE 81–82 cited above, the Department hereby revokes PTE 81–82, effective November 22, 1991.

Signed at Washington, DC, this 16th day of October, 1991.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91–25515 Filed 10–22–91; 8:45 am]

BILLING CODE 4510–29–M

[1] Section 102 of Reorganization Plan No. 4 of 1978 [43 FR 47713, October 17, 1978], generally transferred the Secretary of the Treasury's exemptive authority under section 4975(c)(2) of the Code to the Secretary of Labor.

In the discussion of the revocation, references to specific sections of the Act also should be read to refer to the corresponding provisions of section 4975 of the Code.

[Application No. D–2874]

Withdrawal of Proposed Class Exemption for Guaranteed Contract Separate Accounts; Fiduciary Transactions

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Withdrawal of proposed class exemption.

SUMMARY: This document contains a withdrawal of a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code (the Code).

FOR FURTHER INFORMATION CONTACT: Kay Madsen of the Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor (202) 523–8971 (this is not a toll-free number) or Diane Pedulla of the Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor (202) 523–9597 (this is not a toll-free number).

[2] The Department notes that it is, elsewhere in this issue of the **Federal Register**, concurrently withdrawing from consideration the Proposed Class Exemption for Guaranteed Contract Separate Accounts; Fiduciary Transactions [D–2874, 46 FR 46448] that was published simultaneously with PTE 81–82. The proposed class exemption supplements PTE 81–82 by providing relief from the prohibitions of section 406(b) of the Act for transactions involving the assets of guaranteed contract separate accounts.

Background

On September 18, 1981, the Department published in the **Federal Register** (46 FR 46448) a notice of pendency of a proposed class exemption (the Notice) from the prohibited transaction restrictions of section 406(b) of the Act and from certain taxes imposed by the Code.[1] The proposed class exemption would permit life insurance companies to engage in certain transactions involving "guaranteed contract separate accounts", and supplements Prohibited Transaction Exemption 81–82 (46 FR 46443, September 18, 1981), which was granted by the Department simultaneously with the notice of proposed exemption.[2]

On November 13, 1986, the Department published a final regulation, 29 CFR 2510.3–101 clarifying the definition of "plan assets" for purposes of title I of the Act and section 4975 of the Code. Regulation section 29 CFR 2510.3–101(h) provides, in part, that when a plan acquires or holds an interest in a separate account of an insurance company its assets include its investment and an undivided interest in each of the underlying assets of the separate account, unless the separate account is maintained solely in connection with fixed contractual obligations of the insurance company under which the amounts payable, or credited, to the plan and to any participant or beneficiary of the plan (including an annuitant) are not affected in any manner by the investment performance of the separate account.

In view of the exception set forth in the final "plan assets" regulation for insurance company separate accounts that are maintained solely in connection with certain guaranteed obligations of an insurance company, the Department

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1976), generally transferred the Secretary of the Treasury's exemptive authority under section 4975(c)(2) of the Code to the Secretary of Labor.

In the discussion of the withdrawal of the proposed class exemption, references to specific sections of the Act also should be read to refer to the corresponding provisions of section 4975 of the Code.

[2] The Department notes that it is also publishing elsewhere in this issue of the **Federal Register** a notice of revocation of PTE 81–82. PTE 81–82 contained a final exemption from the prohibited transaction restrictions of sections 406(a) and 407(a) of the Act for transactions between a party in interest and a separate account maintained by life insurance companies in connection with contracts under which the life insurance company either: (1) Guarantees repayment of amounts deposited with it by an employee benefit plan, together with accrued interest, on a fixed date, or (2) guarantees payment of a fixed annuity.

has determined that the proposed exemption should be withdrawn from further consideration by the Department.

Accordingly, the notice of pendency is hereby withdrawn.

Signed at Washington, DC, the 16th day of October, 1991.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 91-25516 Filed 10-22-91; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-8775, et al.]

Proposed Exemptions; Anthony J. Bernardo, Jr., D.D.S., P.A. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Anthony J. Bernardo, Jr., D.D.S., P.A. Profit Sharing Plan (the Plan) Located in Wilmington, Delaware

[Application No. D-8775]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash of a parcel of real property (the Property) from the Plan to Anthony J. Bernardo, Jr. (Bernardo) and Mary Ann Bernardo, parties in interest with respect to the Plan, provided the Plan receives no less than the greater of $105,000 or the fair market value of the Property at the time of sale.

Summary of Facts and Representations

1. Anthony J. Bernardo, Jr., D.D.S., P.A. (the Employer) is engaged in the business of a dental practice in the Wilmington, Delaware, area. The Plan is a profit sharing plan which had two participants and total assets of approximately $422,000 as of December 31, 1990. The trustees of the Plan are Bernardo and his wife, Mary Ann, although his wife is not a participant in the Plan.

2. The Plan purchased the Property in July 1981 from a party unrelated to the Plan or the Employer. The applicant represents that the Plan originally acquired the Property because it was perceived to be a good investment which would appreciate over time. The purchase price of $40,000 was paid in cash plus a mortgage of $10,000 (within the seller of the Property) which was paid in full within six months. The Property consists of approximately 0.25 acre located in the City of Wilmington. The Property is an undeveloped residential site which contains no significant improvements and which has produced no income for the Plan. The total cost to the Plan of acquiring and holding the Property has been approximately $47,000, including payments of taxes, insurance and interest. The Property has not been used by any party in interest with respect to the Plan since the time of purchase by the Plan. However, the Property is adjacent to a property owned by Bernardo which contains his primary residence.[1]

3. The Plan obtained an appraisal on the Property from Robert A. Merrill (Merrill) of the Delaware Appraisal Group, a real estate agent and appraiser located in Wilmington. The applicant represents that Merrill is independent of the Employer and of Bernardo. Utilizing the sales comparison approach to value, Merrill estimated that the fair market value of the Property was $105,000 as of April 26, 1991.

Merrill states that he was aware that Bernardo is the prospective buyer of the Property and that Bernardo owns a contiguous parcel of real estate on which his primary residence is located. However, Merrill asserts that the

[1] The Department expresses no opinion as to whether Plan fiduciaries violated any of the fiduciary responsibility provisions of part 4 of title I of the Act in acquiring and holding the Property.

adjacency in this case had no positive or negative influence on the calculation of fair market value. According to Merrill, in appraising the Property as a single family building site, the value would be no more or less than if it were available to the public in the open market regardless of the purchaser.

4. In order to realize a substantial gain on its investment in the Property, the Plan now proposes to sell the Property to Bernardo and his wife, Mary Ann. The purchasers will pay no less than current fair market value for the Property at the time of sale, based on an updated independent appraisal. The sale will be entirely for cash and the Plan will pay no commissions or costs in regard to the transaction. According to the applicant, the proceeds of the sale will be invested in assets which should produce a higher rate of return for the Plan.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The fair market value of the Property will be established by an independent real estate appraiser; (2) the buyers will pay no less than fair market value for the Property at the time of sale; (3) the transaction will be entirely for cash; and (4) the sale will enable the Plan to earn a substantial profit on an investment that has produced no income for the Plan.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Data Arts and Sciences, Inc. Pension Plan (the Pension Plan) and Data Arts and Sciences, Inc. Profit-Sharing Plan (the P-S Plan; together, the Plans) Located in Natick, Massachusetts

[Application Nos. D-8661 and D-8662]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of through (E) of the Code, shall not apply to (1) a proposed loan by the Plans (the Loan) of no more than $190,000 to the Strathmore Realty Trust (Strathmore), a party in interest with respect to the Plans, and (2) the proposed personal guarantees of Strathmore's obligations under the Loan by Bjorn E. Nordemo and John C. Traver (Nordemo and Travers), who are parties in interest with respect to the Plans; provided that (a) the Loan does not exceed twenty five percent of the Plans' assets at any time, and (b) all terms of the Loan are at least as favorable to the Plans as those which the Plans could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plans are defined contribution plans sponsored by Data Arts and Sciences, Inc. (the Employer), a Massachusetts private corporation engaged in the development and marketing of computer software in Natick, Massachusetts. As of September 30, 1990, the Pension Plan had total assets of $341,308, the P-S Plan had total assets of $418,827, and each Plan had seven participants. The trustees of the Plans are Nordemo and Travers (the Trustees), each of whom is a 50 percent owner of the Employer and a participant in the Plans. The Trustees' accounts in the Plans represent approximately 87 percent of the Plans' assets. Each of the Trustees is a 50 percent beneficial owner of Strathmore, a Massachusetts nominee trust used for holding title to real property.

2. Strathmore owns certain improved real property (the Property) located at 8 Strathmore Road in Natick, Massachusetts. The Property consists of a one-story brick and block office building situated on three-fourths of an acre of land. The Employer leases the Property from Strathmore and occupies the Property as its principal place of business. The Property secures a commercial real estate loan by the Bank of Boston to Strathmore (the Bank Loan) with a maturity date of October 25, 1991. The Trustees represent that Strathmore must secure new financing arrangements in order to make the final balloon principal payment to the Bank upon the Bank Loan's maturity. The Trustees propose the Loan from the Plans to Strathmore as part of the replacement financing, and they are requesting an exemption to permit the Loan, including their personal guarantees of the Loan, under the terms and conditions described herein.

3. The Loan will be in a principal amount not to exceed the lesser of (a) $190,000 or (b) twenty five percent of the Plans' total assets. Participation in the Loan will be allocated between the Plans such that no more than twenty five percent of the assets of either Plan will be involved in the Loan. The Loan will be secured by a duly filed first mortgage on the Property, which had a value of $560,000 as of January 29, 1991, according to Thomas Schenck, MAI, and Ellen Miller, real property appraisers with R.M. Bradley and Company, Inc. in Boston, Massachusetts. The Property will be kept fully insured against fire, theft, casualty and other hazards at no expense to the Plans, with the Plans named as insured under such insurance.

The Loan will be evidenced by a promissory note (the Note) reflecting all terms of the Loan. The Loan principal will be interest, payable monthly, at an annually-adjusted rate of no less than the prevailing market rate for such loans as determined by the Plans' independent fiduciary, discussed below. In no event will the Loan's interest rate be less than two percent above the prime commercial lending rate charged by the U.S. Trust Company (U.S. Trust) in Framingham, Massachusetts. The Loan principal will be repaid in monthly installments amortized over the 15-year term of the Loan.

Under the Note, Strathmore will be liable for all costs of collection, including reasonable attorney's fees, in the event of default on the Loan. The Note provides that the entire amount of the Loan shall become immediately due and payable, at the option of the Note holder, upon any failure to make a payment when due, the failure to deliver additional collateral when demanded, any change in Strathmore's condition which poses a substantial security risk, or the death, insolvency or business failure of Strathmore or its owners. The Note will be guaranteed as to interest and principal by the Trustees in their individual capacities. Each Trustee represents himself to have a net worth in excess of $1.5 million.

4. The Plans' interests with respect to the Loan are represented by an independent fiduciary, John P. Napolitano (the Fiduciary), an accountant with the firm of Napolitano and Company in Framingham, Massachusetts. The Fiduciary states that he is knowledgeable of the fiduciary responsibilities under the Act and that he in independent of and unrelated to Strathmore, the Employer and the Trustees. The Fiduciary will represent the Plans' interests for the duration of the Loan in monitoring Strathmore's performance of all Loan obligations, enforcing the Loan terms, including pursuit of appropriate remedies in case of default, and monitoring the condition and adequacy of the Property as Loan collateral to ensure that the Loan remains secured by collateral worth at least 150 percent of the Loan at all times. The Fiduciary will maintain oversight of the prevailing fair

market rate of interest for the Loan and will require the Loan's interest rate to be adjusted annually to a rate higher than two percent above U.S. Trust's prime rate if necessary for the Loan's rate of interest to remain at least the fair market interest rate. Napolitano represents that he has reviewed and considered the terms of the proposed Loan and has examined the condition and mix of the Plans' investments, as well as the Plans' liquidity needs. He represents that he has determined, taking all factors into consideration, that the proposed Loan will be appropriate for the Plans and will be protective and in the best interests of the Plans' participants and beneficiaries. Ann M. Morganti, senior vice president of U.S. Trust (Morganti), represents that for a loan to Strathmore U.S. Trust would charge two percent over U.S. Trust's prime rate and would not anticipate charging any points for such a loan. Morganti states that U.S. Trust's prime rate was 8.5 percent as of September 24, 1991.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plans' interests with respect to the proposed Loan are represented by an independent fiduciary, Napolitano; (2) The Loan will be secured by a first mortgage on the Property, which has a value in excess of no less than 150% of the Loan principal; (3) Strathmore's obligations under the Loan will be guaranteed personally by the Trustees, each of whom has a net worth in excess of $1.5 million; (4) The Loan will be evidenced by the Note, which makes Strathmore liable for all costs of collection in any event of default on the Loan; and (5) The Plans are assured a rate of interest on the Loan of no less than the fair market interest rate and in no event less than two percent over the prime rate of U.S. Trust.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of October, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91-25517 Filed 10-22-91; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 91-63; Exemption Application No. D-8411, et al.]

Grant of Individual Exemptions; CB Commercial Real Estate Group, Inc. (CBCR), et al.

AGENCY: Pension and Welfare benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

CB Commercial Real Estate Group, Inc. (CBCR) Located in Los Angeles, California

[Prohibited Transaction Exemption 91-63; Exemption Application No. D-8411]

Exemption

Part I—Exemption for Certain Transactions Involving Investment in a Managed Trust Account or Mortgage Account

The restrictions of sections 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to employee benefit plan (Participating Plan) investment in a trust account designed to invest in equity interests or mortgage loans convertible to equity interests in real estate (Managed Trust Account) or to invest in fixed interest rate commercial mortgage loans (Mortgage Account) which is not commingled with the assets of other trust accounts where the Custodian serves as custodial trustee and CB Commercial Realty Advisors, Inc. (CB Advisors) renders investment management services, provided that:

(a) Each investment is authorized in writing by a fiduciary of a Participating Plan who is independent of the Custodian or CB Advisors and any of their affiliates; and

(b) The applicable General Conditions of part V are met.

Part II—Exemption for Certain Transactions Involving Parties in Interest and Common Trusts or Mortgage Funds

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transaction between a party in interest with respect to a Participating Plan and a common or collective trust designed to invest in equity interests or mortgage loans convertible to equity interests in real estate (Common Trust) or to invest in fixed interest rate commercial mortgage loans (Mortgage Fund) for which the Custodian serves as custodial trustee and CB Advisors renders investment management services if the applicable General Conditions of part V are met and, at the time of the transaction, the Participating Plan in such Common Trust or Mortgage Fund together with the interests of any other plans maintained by the same employer and/or employee organization in the Common Trust or Mortgage Fund do not exceed 10 percent of the total of all assets in the Common Trust or Mortgage Fund.

Part III—Exemption for Certain Transactions Between Common Trusts or Managed Trust Accounts and CB Advisors or its Affiliates

The restrictions of section 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the transaction described below, if the General conditions of part V are satisfied:

The payment to CB Advisors of disposition fees (Disposition Fees) under the terms established in the respective Trust Agreement covering the Common Trust or Managed Trust Account (and as described in the summary of facts and representations of the proposed exemption for Prohibited Transaction Exemption 89–13, (54 FR 702 January 9, 1989)), provided that the payment and terms of such Disposition Fees shall have been approved by an independent fiduciary of the plan at the time the Trust Agreement was entered into and that the total of all fees paid to CB Advisors constitute no more than reasonable compensation.

Part IV—Exemption for Certain Transactions Between Joint Ventures or Partnerships and CBCR or its Affiliates

The restrictions of section 406(b)(3) of the Act and the taxes imposed by section 4975(a) and (b) of the code, by reason of section 4975(c)(1)(F) of the Code, shall not apply to the transaction described below:

The payment of fees or commissions to CBCR or its affiliates by partnerships or joint ventures in which a Common Trust or Managed Trust Account is a partner or joint venturer or by an entity with respect to which a Common Trust or Managed Trust Account has made a loan which is convertible into equity, for Management Services furnished with respect to such partnership or joint venture; provided that the applicable General Conditions of Part V are satisfied and the following conditions are met:

(a) The fees or commissions paid to CBCR or its affiliates are reasonable;

(b) A party which is not affiliated with the Custodian or CBCR or any of their affiliates and which has an equity interest in excess of 10 percent in the partnership, joint venture or the entity to which the loan was made makes the decision to hire the service provider;

(c) Neither the Custodian nor CBCR nor any of their affiliates have the power to exercise control over the selection of the service provider (other than through the exercise of a veto for reasonable cause); and

(d) The portion of any fee received by CBCR or an affiliate from the partnership or joint venture for which the Common Trust or Managed Trust Account is responsible due to its proportionate interest in the partnership or joint venture will be applied as a credit to the Management Fee paid to CB Advisors by the Common Trust or Managed Trust Account.

Part V—General Conditions

(a) All transactions are on terms and conditions that are at least as favorable to the Managed Trust Account(s), Mortgage Account(s), Common Trusts(s), and Mortgage Fund(s) as those in arm's-length transactions between unrelated parties would be.

(b) No plan subject to the provisions of title I of the Act or to section 4975 of the Code may invest in a Common Trust or Mortgage Fund or establish a Managed Trust Account or Mortgage Account unless the plan has total net assets with a value in excess of $50,000,000 and no such plan may invest more than 5 percent of its assets in any one Common Trust, Mortgage Fund, Managed Trust Account or Mortgage Account, or more than 10 percent of its assets in Trust Accounts and Funds established by the Custodian or CB Advisors or any of their affiliates.

(c) Prior to making an investment in a Common Trust, Mortgage Fund, Managed Trust Account, or Mortgage Account, a fiduciary for the plan independent of CBCR, the Custodian and their affiliates receives offering materials which disclose all material facts concerning the purpose, structure and operation of such Trust, Fund, Trust Account, or Mortgage Account in which it participates.

(d) Each Participating Plan shall receive the following with respect to any Common Trust, Mortgage Fund, Managed Trust Account, or Mortgage Account in which it participates:

(1) Audited Financial Statements, prepared by independent public accountants selected by CB Advisors, not later than 90 days after the end of the Common Trust, Mortgage Fund, Managed Trust Account, or Mortgage Account fiscal year.

(2) Quarterly reports prepared by CB Advisors relating to the overall financial position and operating results of the Common Trust, Mortgage Fund, Managed Trust Account, or Mortgage Account which will include all fees paid by the Common Trust, Mortgage Fund, Managed Trust Account, or Mortgage Account and by any partnerships or

joint ventures in which the Common Trust or Managed Trust Account is invested.

(3) Annual estimates prepared by CB Advisors of the current fair market value of all assets owned by the Common Trust, Mortgage Fund, Managed Trust Account, or Mortgage Account.

(4) Copies of the quarterly reports which the Custodian is require to file with the Superintendent of Banks of the state in which the bank is established, and an immediate report with regard to any finding by such Superintendent of Banks involving inappropriate fiduciary behavior with respect to any Managed Trust Account, Common Trust or Mortgage Fund or Account.

(5) In the case of a Common Trust or Mortgage Fund, a list of all of the other investors in the Common Trust or Mortgage Fund.

(e) The Custodian or CB Advisors or any of their affiliates shall maintain, for a period of six years, the records necessary to enable the persons described in subsection (f) of this part V to determine whether the conditions of his exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Custodian or CB Advisors or any of their affiliates, the records are lost or destroyed prior to the end of the six year period, and (ii) no party in interest other than the Custodian and CB Advisors shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by subsection (f) below.

(f) Notwithstanding any provisions of section 504(a)(2) and (b) of the Act,

The records referred to in subsection (e) of this part V shall be unconditionally available at their customary location for examination during normal business hours by:

(1) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the relevant Superintendent of Banks;

(2) Any fiduciary of a Participating Plan or any duly authorized employee or representative of such fiduciary;

(3) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer; and

(4) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participating or beneficiary.

Part VI—Definitions and General Rules

For the purposes of this exemption:

(a) An *affiliate* of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term *control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term *Custodian* means a bank, as defined in section 202(a)(2) of the Investment Advisors Act of 1940, which bank has, as of the last day of its most recent fiscal year, equity capital (as defined in section V(k) of PTE 84–14) in excess of $1,000,000, and which is not an affiliate of CBCR.

(d) The term *Management Services* means:

(1) Services of real estate brokers and finders in connection with the acquisition or disposition of real property or interests therein, or the services of mortgage brokers in connection with the making of mortgage loans secured by commercial real estate.

(2) Services of property managers, or loan servicers.

(3) Services of leasing agents in connection with obtaining leases on properties owned by the Common Trust or Managed Trust Account.

(e) The term *relative* means a "relative" as that term is defined in section 3(15) of the Act (or a member of the "family" as that term is defined in section 4975(e)(6) of the Code), or brother, sister, or a spouse of a brother or sister.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions which are the subject of this exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 14, 1991, at 56 FR 40629.

FOR FURTHER INFORMATION CONTACT: David Lurie of the Department, telephone (202) 523–7901. (This is not a toll-free number.)

Dale L. Waters, Inc. 401(k) Profit Sharing Plan (the PS Plan); and Dale L. Waters, Inc. Money Purchase Pension Plan (the MP Plan; together, the Plans) Located in Sacramento, California

[Prohibited Transaction Exemption 91–64; Exemption Application Nos. D–8606 and D–8607]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plans of their interests (the Interests) in the Group 9191 Partnership to Mr. Dale L. Waters, a party in interest with respect to the Plans, provided the PS Plan receives the greater of $33,898.25 or the fair market value of its Interest on the date of the sale, and the MP Plan receives the greater of $53,166.55 or the fair market value of its Interest on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 3, 1991 at 56 FR 43611.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Profit Sharing Plan and Trust of Gary Resnik (the Plan) Located in Beachwood, OH

[Prohibited Transaction Exemption 91–65; Exemption Application No. D–8630]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the proposed loan (the Loan) of $38,100 to Gary E. Resnik, D.D.S., a sole proprietorship, by the individually-directed account (the Account) in the Plan of Dr. Gary E. Resnik, provided the terms of the Loan are at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption published on September 11, 1991 at 56 FR 46337.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of October, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91-25518 Filed 10-22-91; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Friday, October 25, 1991, in suite S-4215 ABC, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the Seventieth meeting of the Secretary's ERISA Advisory Council which will begin at 9:30 a.m., is to receive status reports from each of the Council's work groups i.e., Enforcement; Retiree Medical Benefits; Small Business Retiree Plans, and to invite public comment on any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before October 22, 1991 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210.

Individuals, or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 523-8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 22, 1991.

Signed at Washington, DC, this 18th day of October, 1991.

David George Ball,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 91-25519 Filed 10-22-91; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Enforcement of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 11:30 a.m. Thursday, October 24, 1991, in room S-4215 BC, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Enforcement Working Group was formed by the Advisory Council to study issues relating to Enforcement for employee benefit plans covered by ERISA.

The purpose of the October 24, meeting is to review public testimony previously received, receive additional public comments and prepared a status report for discussion by the Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before October 22, 1991, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 22, 1991.

Signed at Washington, DC, this 18th day of October, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91-25520 Filed 10-22-91; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Small Business Retirement Plans of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m. Thursday, October 24, 1991, in room S-4215 BC, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Small Business Retirement Plans Working Group was formed by the Advisory Council to study issues relating to Small Business for employee benefit plans covered by ERISA.

The purpose of the October 24, meeting is to review public testimony previously received, received additional public comments and prepare a status report for discussion by the Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the

Working Group should submit written requests on or before October 22, 1991, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 22, 1991.

Signed at Washington, DC, this 18th day of October, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91–25521 Filed 10–22–91; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Retiree Medical Benefits of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 1:30 p.m. Thursday, October 24, 1991, in room S–4215 BC, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Retiree Medical Benefits Working Group was formed by the Advisory Council to study issues relating to Retiree Medical Benefits for employee benefit plans covered by ERISA.

The purpose of the October 24, meeting is to review public testimony previously received, receive additional public comments and prepare a status report for discussion by the Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before October 22, 1991, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 22, 1991.

Signed at Washington, DC this 18th day of October, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91–25522 Filed 10–22–91; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meetings

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

DATE AND TIME: Tuesday, November 5, 1991—9:30 a.m. to 6 p.m.; Wednesday, November 6, 1991—8 a.m. to 12 p.m.

PLACE: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Jeff Stryker, Interim Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006, (202) 254–5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: On Tuesday, November 5, 1991, the Commission will hold a meeting to examine various proposals to reduce the risk of transmission of blood-borne pathogens in the health care setting, including HIV. Particular attention will be given to the social and economic implications of risk-reduction proposals and their potential impact on access to health care services. A public comment period will conclude the meeting. Written comments on these issues are welcome from interested individuals or organizations. On Wednesday, November 6, 1991, the Commission will discuss its workplan for 1991–92.

Interpreting services are available for deaf people. Please call our TDD number (202) 254–3816 to request services no later than October 30, 1991.

Dated: October 18, 1991.

Jeff Stryker,

Interim Executive Director.

[FR Doc. 91–25540 Filed 10–22–91; 8:45 am]

BILLING CODE 6820–CN–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before (November 22, 1991.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–786–0494) Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC. 20506 (202) 786–0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping

burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Payment Request Form for Individuals.

Form Number: Not Applicable.

Frequency of Collection: Quarterly.

Respondents: Individuals who receive NEH grants.

Use: To request payment of grant funds.

Estimated Number of Respondents: 65.

Frequency of Response: Quarterly.

Estimated Hours for Respondents to Provide Information: One hour per year per respondent.

Estimated Total Annual Reporting and Recordkeeping Burden: 65 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 91-25506 Filed 10-22-91; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting two notices of information collections that will affect the public. Interested persons are invited to submit comments by December 21, 1991. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357-7335, and to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Updating the Research Experiences for Undergraduates (REU) Database.

Affected Public: Individuals.

Responses/Burden Hours: 12,000 respondents, 5 minutes per response.

Abstract: During FY 1987-90, NSF made 3,624 REU awards to provide hands-on research experiences to promising undergraduate students to encourage them to pursue graduate study in science and engineering. The survey requests updated home addresses from participants for longitudinal tracking and interim educational and career status information.

Dated: October 17, 1991.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 91-25541 Filed 10-22-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Materials Research; Meeting—Revised

The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research.

Date: Monday, November 4 and Tuesday, November 5, 1991.

Location: Florida State University, Tallahassee, Florida.

Time: 8 a.m.—5 p.m., Monday, November 4, 1991. 8 a.m.—2 p.m., Tuesday, November 5, 1991.

Type of Meeting: Closed.

Contact Person: Dr. Adrian M. de Graaf, Deputy Division Director, Division of Materials Research, room 408 National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9794, FAX: (202 357-7959.

Purpose of Committee: To provide advice and recommendations concerning the continued support for the National High Magnetic Field Laboratory (NHMFL) being established by Florida State University, the University of Florida, and Los Alamos National Laboratory.

Agenda: The Panel will review the progress report and proposal for continued funding from the NHMFL.

Reason for Closing: (Revised) The progress report being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-25542 Filed 10-22-91; 8:45 am]

BILLING CODE 7555-01-M

Privacy Act of 1974; Revision to Two Systems of Records

AGENCY: National Science Foundation.

ACTION: Notice of revised and discontinued systems of records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the National Science Foundation (NSF) is providing notice of a revision to two systems of records. The systems are NSF-50, "Principal Investigator/Proposal File and Associated Records," and NSF-51, "Reviewer/Proposal File and Associated Records." Both systems include the investigatory records maintained by NSF when proposals are submitted to the agency and subsequent evaluations of the applicants and their proposals are obtained. These systems are being revised to include an additional routine use.

These two systems replace three systems previously listed as: (1) NSF-28, "Principal Investigator/Project Director Files," (2) NSF-29, "Principal Investigator/Project Director Subsystem," and (3) NSF-30 "Reviewer, Consultant, and Panelist Files." These systems are printed in their entirety.

In accordance with Privacy Act requirements, NSF has provided a report on the proposed systems to the Director of OMB, the President of the Senate, and the Speaker of the House of Representatives.

EFFECTIVE DATE: Title 5 U.S.C. 552a(e) (4) and (11) require that the public be provided a 30-day period in which to comment on the routine uses of a system. This new routine use shall take effect without further notice on November 22, 1991, unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: Written comments should be submitted to the NSF Privacy Act Officer, Division of Personnel and Management, National Science Foundation, rm. 208, 1800 G Street, NW., Washington, DC 20550. All comments will be available for public inspection in Rm. 208, at the above address between the hours of 9 a.m. and 4 p.m.

Dated: October 18, 1991.

Herman G. Fleming,

NSF Privacy Act Officer.

ALTERED SYSTEMS

NSF-50

SYSTEM NAME:

Principal Investigator/Proposal File and Associated Records.

SYSTEM LOCATION:

Decentralized. There are numerous separate files maintained by individual NSF offices and programs. National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Each person that requests support from the National Science Foundation, either individually or through an academic institution.

CATEGORIES OF RECORDS IN THE SYSTEM:

The name of the principal investigator, the proposal and its identifying number, supporting data from the academic institution or other applicant, proposal evaluations from peer reviewers, a review record,

financial data, and other related material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 1870.

PURPOSE OF THE SYSTEM:

This system enables program offices to maintain appropriate files and investigatory material in evaluating applications for grants or other support. NSF employees may access the system to make decisions regarding which proposals to fund, and to carry out any other authorized internal duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of information may be made:

1. To qualified reviewers for their opinion and evaluation of applicants and their proposals as part of the application review process.

2. To government agencies needing data regarding the names of Principal Investigators and their proposals in order to coordinate programs.

3. To individuals assisting NSF staff, either through grant or contract, in the performance of their duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Various portions of the system are maintained on computer disks or in hard copy files, depending upon the individual program office.

RETRIEVABILITY:

Information can be accessed from the computer database by addressing data contained in the database, including individual names. An individual's name may be used to manually access material in alphabetized hard copy files.

SAFEGUARDS:

All records containing personal information are maintained in secured file cabinets or are accessed by unique passwords and log-on procedures. Only those employees with a need-to-know in order to perform their duties will be able to access the information.

RETENTION AND DISPOSAL:

File is cumulative and is maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director of particular office or program maintaining such records, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information is obtained from the principal investigator, academic institution or other applicant, peer reviewer, and others.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The portions of this system consisting of investigatory material which would identify persons supplying evaluations of NSF applicants and their proposals have been exempted pursuant to 5 U.S.C. 552a(k)(5).

NSF-51

SYSTEM NAME:

Reviewer/Proposal File and Associated Records.

SYSTEM LOCATION:

Decentralized. There are numerous separate files maintained by individual NSF offices and programs. National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Reviewers that evaluate NSF applicants and their proposals, either by submitting comments through the mail or serving on review panels or site visit teams.

CATEGORIES OF RECORDS IN THE SYSTEM:

The "Reviewer/Proposal File and Associated Records" system is a subsystem of the "Principal Investigator/Proposal File and Associated Records," and will contain the reviewer's name, the proposal and its identifying number, proposal rating, and other related material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 1870.

PURPOSE OF THE SYSTEM:

This system enables program offices to reference reviewers and maintain appropriate files and investigatory material in evaluating applications for grants or other support. NSF employees may access the system to make decisions regarding proposals and to perform any other authorized internal duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of information may be made:

1. To government agencies needing names of potential reviewers or specialists in particular fields.

2. To individuals assisting NSF staff, either through grant or contract, in the performance of their duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Various portions of the system are maintained on computer disks or in hard copy files, depending upon the individual program office.

RETRIEVABILITY:

Information can be accessed from the computer database by addressing data contained in the database, including individual names. An individual's name may be used to manually access material in alphabetized hard copy files.

SAFEGUARDS:

All records containing personal information are maintained in secured file cabinets or are accessed by unique passwords and log-on procedures. Only those employees with a need-to-know in order to perform their duties will be able to access the information.

RETENTION AND DISPOSAL:

File is cumulative and is maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director of particular office or program maintaining such records, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR part 613.

RECORD ACCESS PROCEDURE:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual reviewer.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DISCONTINUED SYSTEMS

The following three Systems have been replaced by the two systems listed above.

NSF-28

SYSTEM NAME:

Principal Investigator/Project Director Files.

SYSTEM LOCATION:

Decentralized. There are numerous separate files maintained by individual NSF offices and programs. National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principal investigators, project directors and proposed principal investigators and project directors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Many programs within the Foundation keep cards filed by the name of the principal investigator or proposed principal investigators. Usually only minimal administrative information is included such as proposal and award number or the fact that the proposal was declined and the date of action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information on these cards may be disclosed to other Government agencies, which often receive proposals from the same principal investigators in order to coordinate national and international scientific programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ASSESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in card files throughout the Foundation and some computerized on P.C. disks.

RETRIEVABILITY:

Alphabetically by last name of individual submitting proposal.

SAFEGUARDS:

Buildings employ security guards. Building is locked during non-business hours when guard is not on duty. Room in which records are kept is locked during non-business hours.

RETENTION AND DISPOSAL:

File is cumulative and retention periods vary.

SYSTEM MANAGER(S) AND ADDRESS:

Head of particular program or office maintaining records.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613. However, the program or office with which the requestor is concerned must be identified.

RECORD ACCESS PROCEDURES:

See "Notification" above.

CONTESTING RECORD PROCEDURES:

See "Notification" above.

RECORD SOURCE CATEGORIES:

Information is taken from submitted proposals and project folders.

NSF-29

SYSTEM NAME:

Principal Investigator/Project Director Subsystem.

SYSTEM LOCATION:

National Science Foundation, Office of Information Systems, System Support Services Branch, 1800 G Street, NW., Washington, DC 20550.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Each individual that requests support from the National Science Foundation, and Principal Investigators or Project Directors from institutions requesting NSF support.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data on the disposition of each application or proposal submitted to the National Science Foundation. Gender, minority code, handicaps and degree information that may be voluntarily supplied by each PI/PD requesting NSF support.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Proposal disposition information may be released to other government agencies, which often receive proposals from the same Principal Investigator in order to coordinate national and international programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer records on disc and tapes.

RETRIEVABILITY:

By last name or Social Security Number of the individual requesting support.

SAFEGUARDS:

Building employs security guard. Building is locked during non-business hours when guard is not on duty. Room in which records are kept is locked during non-business hours. A password is necessary to access the computer.

RETENTION AND DISPOSAL:

File is cumulative and is maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, System Support Services Branch.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURE:

See "Notification" above.

CONTESTING RECORD PROCEDURE:

See "Notification" above.

RECORD SOURCE CATEGORIES:

Information is taken from submitted proposals and project folders.

NSF-30

SYSTEM NAME:

Reviewer/Panelist/Consultant Subsystem

SYSTEM LOCATION:

National Science Foundation, Office of Information Systems. There are numerous separate files maintained by individual NSF offices and programs. National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information kept varies but normally includes the individuals field of expertise and other biographical information. Some files may include correspondence with individual. In case of paid consultant much of the material may be duplicative of material in the System of Records entitled "Official Personnel Folders" which is described in another notice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Other Government agencies needing names of potential reviewers or specialists in particular field may be given information from this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in various forms throughout the Foundation and

some computerized (Review/Panelist Information Subsystem).

RETRIEVABILITY:

Alphabetically by name of individual.

SAFEGUARDS:

Building employees security guard. Building is locked during non-business hours when guard is not on duty. Room in which records are kept is locked during non-business hours. Password must be used to access computer files.

RETENTION AND DISPOSAL:

Records are transitory and are purged periodically.

SYSTEM MANAGER(S) AND ADDRESS:

Head of particular office or program maintaining such records.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613. However, the request must specify the NSF Office or Program about which the requester is concerned.

RECORD ACCESS PROCEDURES:

See "Notification" above.

CONTESTING RECORD PROCEDURES:

See "Notification" above.

RECORD SOURCE CATEGORIES:

Individual reviewers and panelists, other reviewers, consultants and panelist, project folders, project managers, newspapers clippings, correspondence, biographical works such as American Men of Science, and other such miscellaneous sources.

[FR Doc. 91-25543 Filed 10-22-91; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Carolina Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from the requirements of appendix J to 10 CFR part 50 to Carolina Power & Light Company (the licensee) for the Brunswick Steam Electric Plant (BSEP), Unit 2, located in Brunswick County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would grant a one-time exemption from the requirements of 10 CFR part 50, appendix J, Paragraph III. C.1, to allow Type C (local leak rate) testing of two containment isolation valves in the reverse-direction.

The licensee's request for exemption and bases thereof are contained in a letter dated July 29, 1991.

The Need for the Proposed Action

The proposed exemption would allow a one-time exemption from appendix J to 10 CFR part 50 to allow Type C (local leak rate) testing of two containment isolation valves in the reverse-direction. The purpose of the Type C testing is to measure and to ensure that the leakage through the primary reactor containment does not exceed the maximum allowable leakage rate.

For BSEP, Unit 2, the staff has stated in its Safety Evaluation dated January 28, 1991, that 16 of 51 containment isolation valves reviewed did not satisfy the equivalent-or-more-conservative requirement that allows reverse-direction testing. The licensee is taking steps to install test connections to enable future Type C tests for these 16 valves to be conducted by pressurization in the forward-direction as required by appendix J. However, only 14 of those 16 valves were completed. Consequently, the testing of the remaining two valves in the forward-direction can not be conducted until after the next required test for the valves. Therefore, the licensee has requested that these who valves be exempted from the forward testing requirement for the next Unit 2 Type C test (Refueling Outage 9, September through November 1991); the licensee will test them in the forward-direction for the following Type C test (Refueling Outage 10, scheduled to being March 1993). The exemption is needed to enable the licensee to perform the Unit 2 refueling outage and restart as scheduled.

Environmental Impacts of the Proposed Action

The proposed exemption would allow a one-time exemption from appendix J to 10 CFR part 50 to allow Type C (local leak rate) testing of two containment isolation valves in the reverse-direction.

The two subject valves are B32-V22, Recirculation Pump A Seal Injection Valve, and B32-V30, Recirculation Pump B Seal Injection Valve. The licensee has initiated modifications to install test connections that will allow forward-direction testing of these valves. However, due to the insufficient time available to perform the engineering necessary to complete the installation of these modifications prior to the Refueling Outage 9 (scheduled to begin in September 1991), installation of these test connections will be completed during the Refueling Outage 10, scheduled to begin in March 1993. Since appendix J requires Type C testing at every refueling outage (although in no case at intervals greater than two years), the requested exemption will allow only one additional reverse-direction test of these valves during the Refueling Outage 9.

The proposed exemption will not negatively impact containment integrity and will not significantly change the release from facility accidents. Therefore, post-accident radiological releases will not be significantly greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, or result in any significant occupational exposure. Likewise, the proposed exemption would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Because it has been concluded that there is no measurable impact associated with the proposed exemption, any alternative to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impact of the BSEP, Unit 2, operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the BSEP, Unit 2, which was issued in January 1974.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The NRC staff has determined not to prepare an enivornmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption

from 10 CFR part 50, appendix J, dated July 29, 1991, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the William Madison Randall Library, University of North Carolina at Wilmington, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland this 17th day of October 1991.

For the nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–25534 Filed 10–22–91; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Mailability of Sharps and Unsterilized Containers and Devices; Requests for Comments and Information

AGENCY: Postal Service.

ACTION: Notice of inquiry.

SUMMARY: The Postal Service intends to establish packaging standards for containers used to mail used sharps as defined in 40 CFR 259.30a. To facilitate this task, the Postal Service needs to identify organizations or laboratories which can perform packaging tests and issue certificates regarding test results which certify that the primary container is puncture proof and leak resistant, and that sufficient material is enclosed to absorb all the liquid contents. All tests must simulate mailing conditions and the conditions specified in 49 CFR 178.609. These tests will be performed for the manufacturers of the containers and boxes by independent testing organizations or laboratories that do not manufacture the products they will be required to test and certify. The Postal Service desires to inform its customers, not only of the specific packaging requirements which will be required, but also of the names and addresses of the organizations that can perform tests and certify the packaging material.

DATES: Responses must be received on or before November 22, 1991.

ADDRESSES: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–5902. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Earl B. Hohbein (202) 268–5309.

SUPPLEMENTARY INFORMATION: The Postal Service is contemplating the establishment of test requirements for primary containers, absorbent material and shipping containers of medical sharps consistent with the standards of packaging for infectious substances (etiologic agents) as set forth in 49 CFR 178.609, including a requirement that each shipping or mailing container undergo a "bursting test" that determines whether the container will meet a "bursting strength" of at least 200 pounds per square inch. The relevant Department of Transportation tests include: free fall testing in 49 CFR 178.609(d) through (f), 178.609(g), and the puncture tests in section 178.609(h). The test for absorbency would confirm that the material used is adequate to absorb 50 ml. of liquid.

Those organizations or laboratories which could perform such tests and certify that shipping or mailing containers meet the standards prescribed by the Postal Service are invited to respond directly to the Office of Classification and Rates Administration, and submit a brief description of their testing and certification capabilities, experience, location of the testing facility, and any other information that may be pertinent to this solicitation.

For the convenience of Postal customers, organizations that are able to participate in this program would be listed in the Domestic Mail Manual, which is updated quarterly, and incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

Fred Eggleston,

Deputy General Counsel.

[FR Doc. 91–25433 Filed 10–22–91; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street, NW., Washington, D.C. 20549.

Extension

Rule 6c–7, File No. 270–269

Rule 11a–2, File No. 270–267

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval Rules 6c–7 (17 CFR 270.6c–) and 11a–2 (17 CFR 270.11a–2) under the Investment Company Act of 1940.

Rule 6c–7 provides an exemption from certain provisions of sections 22(e) and 27 of the Investment Company Act of 1940 for registered separate accounts offering variable annuity contracts to participants in the Texas Optional Retirement Program. There are approximately 20 registrants governed by Rule 6c–7, with an estimated compliance time of 30 minutes per registrant.

Rule 11a–2 sets forth conditions for offers of exchange by certain registered separate accounts the terms of which do not require prior Commission approval. There are approximately 500 registrants governed by Rule 11a–2, with an estimated compliance time of 15 minutes per registrant.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules ad forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Projects 3235–0276 and 3735–0272 [Rules 6c–7 and 11a–2]), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 7, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–25451 Filed 10–22–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29815; File No. SR–CBOE–91–26]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc., Order Approving Proposed Rule Change Relating to Member and Customer Access to CBOE Constitution and Rules and Member and Member Organizations Consent to Jurisdiction

October 11, 1991.

On June 17, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or

"Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to delete redundant language regarding the authorization of nominees of member organizations, to codify a current Exchange policy that requires members and certain persons associated with member organizations to pledge to abide by the CBOE Constitution and Rules ("Rules") and to require that all members and member organizations keep and maintain a current copy of the Exchange's Constitution and Rules.

The proposed rule change was published for comment in Securities Exchange Act Release No. 29466 (July 22, 1991), 56 FR 34231. No comments have been received on the proposed rule change.

The CBOE proposes to: (1) Delete the last sentence of CBOE Rule 3.6 pertaining to a member organization's authorization of nominees because this requirement is already clearly set forth in Exchange Rule 3.8; (2) codify in Rule 3.6 an existing Exchange practice that individual members and executive officers, directors, principal shareholders, and general and limited partners of member organizations execute a consent to Exchange jurisdiction form; and (3) require members and member organizations to keep and maintain a current copy of the Exchange Constitution and Rules.[3]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6.[4] Specifically, the Commission finds that the proposal to delete the redundant language regarding the authorization of nominees of member organizations is consistent with section 6(b)(5) of the Act because it serves to streamline and reduce confusion with respect to the CBOE's rules.[5]

In addition, because the Exchange is merely codifying its existing practice that individual members and member organizations execute a consent to Exchange jurisdiction form, the Commission believes it is consistent with sections 6(b)(5) and 6(b)(6) of the Act, which Sections provide that CBOE rules must provide for, among other things, equitable principles of trade and the imposition of appropriate disciplinary sanctions against Exchange members, respectively. The CBOE in this instance is formally defining for its members their obligation to pledge to abide by the CBOE Constitution and Rules.

The Commission also believes that the requirement that all members and member organizations keep and maintain a copy of the Exchange's Constitution and Rules is consistent with section 6(b)(5) in that its purpose is to protect investors and the public interest by insuring that all parties who utilize the facilities of the CBOE are familiar with, and have access to, the Rules governing the Exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR-CBOE-90-09), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-25452 Filed 10-22-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18366; 811-4206]

Security Omni Fund; Notice of Application

October 16, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Cam").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Security Omni Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 22, 1991.

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 the applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 12, 1991, and should be accompanied by proof of service on the applicant, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 700 Harrison Street, Topeka, Kansas 66636.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Law Clerk, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of Kansas. On January 18, 1985, applicant filed a notification of registration pursuant to section 8(a) of the Act. A registration statement under the 1933 Act was filed on January 24, 1986. The registration statement was declared effective on April 30, 1986, and the initial public offering commenced on the same date.

2. On January 25, 1991, applicant's board of directors approved a plan of reorganization (the "Plan"). Applicant mailed proxy materials relating to the proposed reorganization to its shareholders and at a special meeting held on April 26, 1991, applicant's shareholders approved the reorganization.

3. On April 26, 1991, pursuant to the Plan, applicant transferred substantially all of its assets to Security Ultra Fund ("Ultra") in exchange for shares of Ultra on a *pro rata basis.* The transfer of applicant's assets in exchange for shares of Ultra was based on the relative net asset value of Ultra and applicant.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] One copy of the paperback Rules will be provided to members each time the volume is published, usually in January of each year. The Rules are updated in the Regulatory Bulletin, which is included twice a month in the weekly Exchange Bulletin. One copy of the Exchange Bulletin is currently provided to each membership. As with the Exchange Bulletin, a member organizations's copy of the Rules will be distributed to the nominee of the organization.

[4] 15 U.S.C. 78f (1988).

[5] The language which is being deleted from CBOE Rule 3.6 was made redundant as a result of new Rule 3.8 regarding "Nominees" which was approved by the Commission in October, 1990. See Securities Exchange Release Nos. 28092 (June 4, 1990), 55 FR 23621 and 28527 (October 10, 1990), 55 FR 42111.

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30-3(a)(12) (1989).

4. Expenses incurred in connection with reorganization, including legal fees, auditing fees, postage, and printing costs, totaled approximately $78,882. Total expenses assumed by applicant were $57,915, and the remaining expenses of $20,967 were allocated to Ultra.

5. There are no security holders to whom distributions in complete liquidation of their interests have not been made. Applicant has not debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. A certificate of dissolution was filed with the Secretary of State of Kansas on April 26, 1991.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-25504 Filed 10-22-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18365; 811-4890]

Taft Philanthropic Trust; Application

October 15, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Taft Philanthropic Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Appplicant seeks an order declaring that it has ceased to be an investment company under the Act.

FILING DATE: The application on Form N-8F was filed on August 12, 1991.

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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 12, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issued contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549. Applicant, 510 King Street, Suite 200, P.O. Box 820, Alexandria, Virginia 22313.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Law Clerk, (202) 272-3026, or Nancy M. Rappa, Branch Chief, (202) 272-3030 (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.

Applicant's Representations

1. Applicant is an open-end diversified management investment company that was organized as a Massachusetts business trust. On October 31, 1986, applicant filed its registration statement pursuant to section 8(b) of the Act. Applicant's registration statement was declared effective on April 1, 1987, and the initial public offering commenced immediately thereafter.

2. On March 25, 1991, applicant's board of trustees approved and adopted a Plan of Complete Liquidation and Termination (the "Plan) of Taft Philanthropic Trust. At the time of approval of the Plan, applicant had no security holders.

3. As of October 31, 1987, applicant had 10,015 shares of beneficial interest outstanding having an aggregate value of $100,150 and a per share net asset value of $10. All of applicant's outstanding shares were redeemed by the initial shareholders on February 3, 1988.[1]

4. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

5. The expenses, including accounting, administrative and certain legal expenses, are being paid by Templeton Funds Management, Inc., a wholly owned subsidiary of Templeton, Galbraith & Hansberger Ltd., applicant's former investment adviser.

6. Applicant's organization as a Massachusetts business trust will be terminated upon the granting of the order declaring that applicant has ceased to be an investment company under the Act.

[1] Per letter dated August 30, 1991, Applicant has represented that the initial shareholders of Applicant were the original sponsors of Applicant and they are the only shareholders who participated in the liquidation of Applicant.

7. Applicant has retained no assets, has no debts outstanding, and is not a party to any litigation or administrative proceeding.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-25453 Filed 10-22-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18367; 811-2887]

Woods Investment Company; Notice of Application

October 16, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Woods Investment Company.

RELEVANT ACT SECTION: Section 8(f) of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 19, 1991.

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 the applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 12, 1991, and should be accompanied by proof of service on the applicant, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 2601 Northwest Expressway, Suite 611 East, Oklahoma City, OK 73112.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Law Clerk, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a closed-end, diversified investment company, was organized as a corporation under the laws of the State of Delaware. On December 13, 1978, applicant filed a notification of registration pursuant to section 8(a) of the Act. Applicant previously had registered under the 1933 Act as an operating company known as Woods Corporation.

2. On March 8, 1991, applicant's board of directors adopted a resolution recommending a Plan of Complete Liquidation and Dissolution (the "Plan"). On April 19, 1991, applicant mailed proxy materials relating to the proposed liquidation to its shareholders. Applicant's shareholders approved the Plan at a special meeting held on May 21, 1991.

3. As of March 31, 1991, applicant had 1,543,517 shares of common stock outstanding. Applicant's per share net asset value on that date was $9.42, and its total net assets amounted to $14,545,992. On June 6, 1991, pursuant to the Plan, applicant distributed all its remaining net assets to its shareholders. Each shareholder received $9.42 per share.

4. None of the shareholders of applicant have received distributions in complete liquidation. Rather, after the initial liquidations cash distribution described in item 3, applicant distributed all its remaining assets to a liquidating trust established for the benefit of applicant's shareholders ("Liquidating Trust"). On June 13, 1991, applicant transferred to the Liquidating Trust all its remaining assets, subject to liabilities, consisting of (i) cash in the approximate amount of $95,955.49 plus interest earned during the month of June on funds held in a certain account at the Liberty National Bank and Trust Company of Oklahoma City; and (ii) its claim in *In Re: Washington Public Power Supply System Securities Litigation*, M.D.L. 551, United States District Court for the District of Arizona ("WPPSS").

5. The WPPSS litigation arises from losses incurred by applicant on WPPSS bonds. There is a possibility that a claim was not timely filed on applicant's behalf of the WPPSS litigation. However, applicant has been advised that class plaintiffs' counsel in the WPPSS litigation intends to request that all late claims, including applicant's claim, be honored and allowed to participate in the distribution of any settlement proceeds in the WPPSS litigation.

6. In connection with the liquidation, approximately $19,757.22 in expenses were incurred, all of which were borne by applicant. These expenses were for legal fees, fees in connection with brokers' distribution of applicant's proxy materials to their clients, and printing and postage expenses. Applicant estimates that there will be unpaid expenses, in the aggregate, of less than $10,000, to be paid by the trustee of the Liquidating Trust out of the funds deposited into the Liquidating Trust on June 13, 1991.

7. Applicant has no debts or other liabilities that remain outstanding, except as described in paragraphs 4 and 6. Applicant is not a party to any litigation or administrative proceeding, except as described in paragraphs 4 and 5.

8. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary to wind up its affairs.

9. Applicant was dissolved in accordance with Delaware law on June 20, 1991.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-25505 Filed 10-22-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Air Carrier Operations Subcommittee; Controlled Rest on the Flight Deck Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Controlled Rest on the Flight Deck Working Group.

SUMMARY: Notice is given of the establishment of a Controlled Rest on the Flight Deck Working Group by the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Dr. R. Curtis Graeber, Manager, Flight Deck Research Avionics/Flight Systems, Boeing Commercial Airplane Group, P.O. Box 3707, MS 33HH, Seattle, WA 98124-2207; telephone (206) 393-6688; fax (206) 477-0778.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Air Carrier Operations Subcommittee was established at that meeting to provide advice and recommendations to the Director, FAA Flight Standards Service, on air carrier operations, pertinent regulations, and associated advisory material. At its October 1, 1991, meeting (56 FR 46349, September 11, 1991), the subcommittee established the Controlled Rest on the Flight Deck Working Group.

Specifically, the working group's task is the following:

To determine the feasibility of preplanned rest in the cockpit during long-range flights and, if feasible, determine the criteria for the establishment of such rest periods.

The Controlled Rest on the Flight Deck Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Air Carrier Operations Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire and describing his or her interest in the task and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittee are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Controlled Rest on the Flight Deck Working Group will be not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on October 17, 1991.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-25491 Filed 10-22-91; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 164; Minimum Operational Performance Standards for Aircraft Audio Systems and Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act. (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the eleventh meeting of Special Committee 164 to be held November 13-15, 1991, in the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of the tenth meeting's minutes; (3) Technical presentations; (4) Review of task assignments from last meeting; (5) Review of the fifth draft of the MOPS; (6) Working group sessions; (7) Assignments of tasks; (8) Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite, 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 16, 1991.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 91-25492 Filed 10-22-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation with an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: October 16, 1991.

Kenneth W. Gideon,

Assistant Secretary for Tax Policy.

[FR Doc. 91-25448 Filed 10-22-91; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

[Dept. Circ. 570, 1991 Rev., Supp. No. 4]

Surety Companies Acceptable on Federal Bonds Correction; The Aetna Casualty and Surety Co.

The underwriting limitation for The Aetna Casualty and Surety Company which was last listed in the Treasury Department Circular 570, July 1, 1991 has been revised. The underwriting limitation, effective July 1, 1991, is hereby corrected as follows:

Current limitation	Corrected limitation	FR Page No.
$162,358,000	$210,258,000	30129

Federal bond-approving officers should annotate their reference copies of Treasury Circular 570, 1991 Revision, to reflect this correction.

Questions concerning this Notice may be directed to the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874-6850.

Dated: October 15, 1991.

Charles F. Schwan, III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 91-25438 Filed 10-23-91; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that an object to be included in the exhibit "An Acquisition in Focus: Hendrick Goltzius's 'Sine Cerere et Libero friget Venus' " (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. This object is imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit object at the Philadelphia Museum of Art, Philadelphia, Pennsylvania, beginning on or about November 15, 1991, to on or about February 2, 1992, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: October 17, 1991.

Alberto J. Mora,

General Counsel.

[FR Doc. 91-25462 Filed 10-22-91; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619-6975, and the address is U.S. Information Agency, 301 Fourth Street, SW., room 700, Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 56, No. 205
Wednesday, October 23, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Friday, October 18, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision) and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsection (c)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, DC.

Dated: October 21, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91–25652 Filed 10–21–91; 12:51 pm]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 17, 1991.

TIME AND DATE: 10:00 a.m., Thursday, October 24, 1991.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)]

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *BethEnergy Mines, Inc.*, Docket Nos. PENN 89–277–R, etc.
2. *Mettiki Coal Corporation*, Docket Nos. YORK 89–10–R, etc.
3. *Rochester & Pittsburgh Coal Co.*, Docket Nos. PENN 88–309–R, etc.
4. *Southern Ohio Coal Company*, Docket Nos. WEVA 88–144–R, etc.
5. *Green River Coal Company*, Docket No. KENT 88–152.

Issues include the validity of notices to provide safeguards issued under 30 C.F.R. § 75.1403.

The Commission has determined that the above items should be discussed in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 (Toll Free).

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 91–25612 Filed 10–21–91; 11:54 am]

BILLING CODE 6735-01-M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Wednesday, October 30, 1991.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC. 20419.

STATUS: The meeting will be closed to the public under Exemption 2 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED: Internal personnel rules and practices.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Dated: October 21, 1991.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 91–25638 Filed 10–21–91; 12:05 pm]

BILLING CODE 7400-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 28, 1991.

A closed meeting will be held on Tuesday, October 29, 1991, at 2:30 p.m. An open meeting will be held on Wednesday, October 30, 1991, at 10:00 a.m., in Room 1C30.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 29, 1991, at 2:30 p.m., will be:

Regulatory matter regarding financial institutions.

Institution of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Wednesday, October 30, 1991, at 10:00 a.m., will be:

Consideration of whether to adopt amendments to Forms S–4 and F–4, and Regulation S–K under the Securities Act of 1933 and related rules that provide additional disclosure requirements for roll-up transactions. These changes are intended to enhance the quality and readability of information provided to investors in connection with roll-up transactions and would set a minimum solicitation period for roll-up transactions. For further information, please contact Meredith B. Cross or Michael L. Hermsen at (202) 272–2573.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Steve Luparello at (202) 272–2100.

Dated: October 21, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–25641 Filed 10–21–91; 12:50 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 56, No. 205
Wednesday, October 23, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Johns Hopkins University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 91-23134 beginning on page 48519 in the issue of Wednesday, September 25, 1991, make the following correction:

On page 48520, in the first column, in the third full paragraph, *Docket Number:* 91-084, in the third line from the bottom, "1-100" should read "1-1000".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 910364-1196]

RIN 0651-AA47

Amendment to Interrogatory Practices

Correction

In rule document 91-21984 beginning on page 46376 in the issue of September 12, 1991, make the following corrections:

1. On page 46376, in the third column, under **EFFECTIVE DATE**, in the third line, "parts" should read "partes".

2. On page 46377, in the first column, in the second paragraph, in the second line, after the first "in" insert "the".

3. On the same page, in the second column, in the third full paragraph, in the tenth line, "therefore" should read "therefor".

4. On page 46379, in the 1st column, in the 2nd full paragraph, in the 17th line, "TTBB" should read "TTAB".

5. On the same page, in the second column, in the heading "**Conditions**" should read "**Considerations**".

§ 2.120 [Corrected]

6. On page 46380, in the 1st column, in § 2.120(d)(1), in the 15th line, "exceed" should read "exceeds".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91-77-000]

Boundary Gas, Inc., Proposed Changes in FERC Gas Tariff

Correction

In notice document 91-2742 appearing on page 4822 in the issue of Wednesday, February 6, 1991, in the second column, in the file line at the end of the document, "FR Doc. 91-2743" should read "FR Doc. 91-2742".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4013-8]

Revision of the North Carolina National Pollutant Discharge Elimination System (NPDES) Program To Issue General Permits

Correction

In notice document 91-23497 beginning on page 49479 in the issue of Monday, September 30, 1991, make the following correction:

On page 49480, in the table, the headings in each column were aligned incorrectly, the first column heading should be blank and the remaining headings as follows:

a. "Approved State NPDES permit program" should appear in the second column.

b. "Approved to regulate Federal facilities" should appear in the third column.

c. "Approved State pretreatment program" should appear in the fourth column.

d. "Approved State general permits program" should appear in the fifth column.

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Extreme External Phenomena; Meeting

Correction

In notice document 91-17485 appearing on page 33950 in the issue of Wednesday, July 24, 1991, in the second column, in the file line at the end of the document, "FR Doc. 91-7485" should read "FR Doc. 91-17485".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107 and 108

[Docket No. 26522; Amdt. Nos. 107-6 and 108-10]

RIN 2120-AD95

Employment Standards

Correction

In rule document 91-19928 beginning on page 41412 in the issue of Tuesday, August 20, 1991, make the following corrections:

1. On page 41413, in the third column, in the third full paragraph, in the fourth line, "not" should read "no".

2. On page 41414:

a. In the second column, in the fifth full paragraph, in the seventh line, "to" should read "too".

b. In the same column, in the same paragraph, in the 11th line, "to" should read "so".

c. In the third column, in the first full paragraph, in the fifth line, "§ 107.12" should read "§ 107.14".

d. In the same column, in the same paragraph, in the third line from the bottom, "an" should read "and".

e. In the same column, in the fourth full paragraph, in the second line, "option" should read "opinion".

f. On page 41415, in the third column, in the fourth paragraph, in the fourth line, "characterized" should read "characterize".

3. On page 41419:

a. In the third column, in the second full paragraph, in the ninth line, "necessity" should read "necessary".

b. In the same column, in the fifth full paragraph, in the ninth line from the bottom, "FAA" should read "FA".

4. On page 41420:

a. In the first column, in the third full paragraph, in the first line, "§ 108.32" should read "§ 108.31".

b. In the 3rd column, in the 3rd full paragraph, in the 13th line, after "present ***." insert closed quotation marks.

5. On page 41423, in the second column, in Table 3., "$137,044,0800" should read "$137,044,800".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 53

[EE-70-91]

RIN 1545-AP93

Taxation of Tax-Exempt Organizations' Income From Ordinary and Routine Investments In Connection With a Securities Portfolio

Correction

In proposed rule document 91-21040 beginning on page 43571 in the issue of Tuesday, September 3, 1991, make the following corrections:

1. On page 43572, in the 1st column, in the 2d full paragraph, in the 13th line, "2 Sess. 3" should read "2d Sess. 3".

2. On the same page, in the second column, in the paragraph under **Purpose**, in the third line from the bottom, "7905" should read "7805".

BILLING CODE 1505-01-D

federal register

Wednesday
October 23, 1991

Part II

Department of Labor

Employment and Training Administration

20 CFR Part 656

Labor Certification Process for the Permanent Employment of Aliens in the United States; Implementation of Immigration Act of 1990; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

RIN 1205-AA86

Labor Certification Process for the Permanent Employment of Aliens in the United States; Implementation of Immigration Act of 1990

AGENCY: Employment and Training Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Employment and Training Administration of the Department of Labor is amending its regulations relating to labor certification for permanent employment of immigrant aliens in the United States. The amendments are necessary because of changes in the immigration laws brought about by the enactment of the Immigration Act of 1990 (Act). The new Act made significant changes in the employment-based preferences and increased the number of employment-based immigrants from 54,000 to 140,000 annually beginning October 1, 1991. The specific changes to the permanent labor certification process addressed in this rulemaking are: (1) Requiring employers to provide notice to collective bargaining agents and U.S. workers of applications for certification; and (2) providing that third parties may submit information related to the application. Changes to Schedule A as a result of changes to the employment-based preferences are also included in the proposed rulemaking. The labor market pilot project provided for by the Act is not included in this interim final rule and will be the subject of a separate rulemaking effort. Substitution of alien beneficiaries on approved labor certifications is eliminated by this rule, and the current method of setting the priority date when the application is filed with the Employment Service has been retained by the Immigration and Naturalization Service (INS). Citation changes to the Immigration and Nationality Act are noted as well.

DATES: *Effective Date:* November 22, 1991. The interim final rule applies to applications for permanent alien labor certification and requests for substitution of aliens received on or after November 22, 1991. Thus, in the case of requests for substitution of aliens, requests received on or after November 22, 1991, shall not be processed. See 20 CFR 656.30(c)(1) and (2) (amended by Numbered Instructions 14.b. and c. of the interim final rule, below). With respect to applications for certification, it should be noted that the third-party notification requirements of Public Law 101-649, sec. 122(b), apply to applications received on or after October 1, 1991.

Comments: The comment period on this rulemaking is being reopened through November 30, 1991. Written comments on the March 20, 1991, Advance Notice of Proposed Rulemaking, and the July 15, 1991, Notice of Proposed Rulemaking will be considered as part of this rulemaking. Comments on the interim final rule shall be submitted by mail and received by November 30, 1991.

ADDRESSES: Submit written information to: Roberts T. Jones, Assistant Secretary, Employment and Training Administration, Department of Labor, room N-4470, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION: David O. Williams, Chair, Immigration Task Force, Employment and Training Administration, Department of Labor, room N-4470, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 535-0174 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Introduction

On July 15, 1991, there was published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) to amend the Department of Labor's regulations for the certification of permanent employment of immigrant aliens in the United States, 56 FR 32244; see also 56 FR 11705 (March 20, 1991) (advance NPRM). Comments were invited from interested persons through August 14, 1991. The interim final rule is published as part of that rulemaking.

II. Background

On November 29, 1990, the Immigration Act of 1990 (Act), Public Law 101-649, 104 Stat. 4978, was enacted. This new legislation makes major changes to and supplements the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) (INA), including amendments related to the admission of aliens to work in the United States. The Act generally takes effect on October 1, 1991. Public Law 101-649, section 161(a); 8 U.S.C. 1101 note.

The Act increases the number of employment-based immigrants from 54,000 to 140,000 annually, beginning October 1, 1991. The Act establishes five preference groups of employment-based immigration: (1) Priority Workers; (2) Professionals with Advanced Degrees and Aliens of Exceptional Ability; (3) Skilled Workers, Professionals and Other Workers; (4) Special Immigrants; and (5) Employment Creation. 8 U.S.C. 1153(b)(1)-(5). The Department of Labor (Department or DOL) has responsibility in two of these groups. They are Preference Groups 2 and 3.

Preference Group 2 includes immigrants who are members of the professions holding advanced degrees or their equivalent or who, because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States and whose services in the sciences, arts, professions or business are sought by an employer in the United States. Up to 40,000 visas may be issued to persons in this group, plus any unused visas from preference Group 1 (Priority Workers). A labor certification from the Secretary of Labor is required unless the Attorney General waives the requirement of a job offer when doing so is deemed in the national interest. 8 U.S.C. 1182(a)(5)(A).

Preference Group 3 includes immigrants who are capable, at the time of petitioning, of performing skilled labor requiring at least 2 years of training or experience, not of a temporary or seasonal nature; professionals who are qualified workers who hold baccalaureate degrees and who are members of the professions; and "other workers" who are qualified aliens who are capable at the time of petitioning of performing unskilled labor. Up to 40,000 visas may be issued to persons in this category, plus any unused visas from Preference Groups 1 and 2. No more than 10,000 visas will be issued to "other workers" on an annual basis. A labor certification from the Department is required. 8 U.S.C. 1153(b)(3)(C) and 1182(a)(5)(A).

Section 122 of the Act makes three changes in the statutory requirements for the permanent labor certification process.

Section 122(a) of the Act requires the Department to test the use of labor market and other information as an alternative to the present case-by-case labor certification process under section 212(a)(5)(A) of the INA. See 8 U.S.C. 1182(a)(5)(A). This 3-year pilot program will test the concept and develop procedures for selecting up to ten shortage and/or surplus occupations. The Department is currently working on issues such as: The appropriate methodology to be used; the division (if any) between shortage and surplus occupations; the sources of data which may be used; the degree of occupational

specificity to employ; and the impact on Schedule A, Group I, and on Schedule B. See 20 CFR 656.10, 656.11, 656.22, and 656.23; and 56 FR 11709 (March 20, 1991). A separate NPRM regarding this project is scheduled to be published during November 1991.

Section 122(b) supplements the statutory basis for the permanent labor certification program by requiring an employer to notify the appropriate collective bargaining representative, if one exists, that it filed a labor certification application. If there is no bargaining representative, all employees must be notified through conspicuous posting in the employer's facility.

Section 122(b) of the Act also supplements the INA by mandating that DOL accept the submission of documentary evidence by any person bearing on a permanent labor certification application, such as documentation on the availability of qualified workers for the job(s) in question, wages and working conditions, and information about the employer's failure to meet terms and conditions of employment with respect to the employment of alien workers and U.S. co-workers.

The Employment and Training Administration's (ETA's) regulations for the certification of permanent employment of immigrant aliens are issued pursuant to section 122 of the Act and section 212(a)(5)(A) of the INA. 8 U.S.C. 1182(a)(5)(A) and 1182 note.

III. Permanent Alien Employment Certification Process

Generally, an individual labor certification from the Department is required for employers to employ an alien under Preference Groups 2 and 3. Before the Department of State (DOS) and the Immigration and Naturalization Service (INS) may issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor first must certify to the Secretary of State and to the Attorney General that:

(a) There are not sufficient United States workers who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of such aliens will not adversely affect the wages and working conditions of similarly employed United States Workers. 8 U.S.C. 1182(a)(5)(A).

If the Department determines that there are no able, willing, qualified, and available U.S. workers, and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, DOL so certifies to INS and to the DOS, by issuing a permanent alien labor certification.

If DOL cannot make either of the above findings, the application for permanent alien employment certification is denied. DOL may be unable to make either of the two required findings for one or more reasons, including, but not limited to:

(a) The employer has not adequately recruited U.S. workers for the job offered to the alien, or has not followed the proper procedural steps in 20 CFR part 656. These recruitment requirements and procedural steps are designed to test the labor market for available U.S. workers. They include posting of the job opportunity on the employer's premises, placing an advertisement in an appropriate publication, and placing a job order for 30 days with the appropriate local Employment Service office.

(b) The employer has not met its burden of proof under section 291 of the INA (8 U.S.C. 1361), that is, the employer has not submitted sufficient evidence of attempts to obtain qualified, willing, able, and available U.S. workers and/or the employer has not submitted sufficient evidence that the wages and working conditions which the employer is offering will not adversely affect the wages and working conditions of similarly employed U.S. workers. With respect to the burden of proof, section 291 of the INA states, in pertinent part, that:

> Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible for such visa or such document, or is not subject to exclusion under any provision of [the INA] * * *.

IV. Department of Labor Regulations

The Department has promulgated regulations, at 20 CFR part 656, governing the labor certification process described above for the permanent employment of immigrant aliens in the United States. Part 656 was promulgated pursuant to section 212(a)(14) of the INA (now at section 212(a)(5)(A)). 8 U.S.C. 1182(a)(5)(A).

The regulations at 20 CFR part 656 set forth the factfinding process designed to develop information sufficient to support the granting or denial of a permanent labor certification. They describe the potential of the nationwide system of public employment service offices to assist employers in finding available U.S. workers and how the factfinding process is utilized by DOL as the primary basis of developing information for the certification determinations. See also 20 CFR parts 651–658; and the Wagner-Peyser Act (29 U.S.C. chapter 4B).

Part 656 sets forth the responsibility of employers who desire to employ immigrant aliens permanently in the United States. Such employers are required to demonstrate that they have attempted to recruit U.S. workers through advertising, through the Federal-State Employment Service System, and by other specified means. The purpose is to assure an adequate test of the availability of qualified, willing and able U.S. workers to perform the work, and to insure that aliens are not employed under conditions adversely affecting the wages and working conditions of similarly employed U.S. workers.

V. Comments on Proposed Rule

The NPRM published in the Federal Register on July 15, 1991, invited interested parties to submit written comments on the proposed amendment on or before August 14, 1991.

Forty-nine comments were received from attorneys, educational institutions, individuals, businesses and State Employment Security Agencies. All of the comments received were considered in the preparation of this interim final rule. Many of the commenters were in favor of the proposed amendments. A number of commenters were critical of one or more of the amendments, and suggested alternatives and improvements. Other comments, such as those relating to the implementation of the new employment-based preference groups, the labor market pilot project, clarification of the role of attorneys in the labor certification process, and streamlining the current labor certification process were not directly related to the proposed rule. However, the Department found these comments to be helpful in gaining insight into the way the public views the permanent labor certification program. These comments will be considered in the Department's deliberations on other needed improvements in the labor certification process.

In the NPRM, the Department stated that it intends to process all labor certification applications filed with State Employment Security Agencies (SESAs) before October 1, 1991, under the current regulations. All comments received on this issue were in favor of this proposal. Therefore, all applications filed before October 1, 1991, will be processed under the current regulations. Applications for substitution of alien

beneficiaries on approved labor certification applications, however, will be accepted until November 22, 1991.

The Department also stated in the NPRM that it will work closely with the DOS and the INS regarding the method of establishing the alien's "priority date" for getting in line to obtain a visa. All commenters that addressed this issue indicated that the current method of establishing the alien's "priority date" in INS' regulations as the date the labor certification application is filed with a local employment service office should be retained. See 8 CFR 204.1(d)(3). In its proposed regulations, INS sought to change from this method to establishing the priority date when the visa petition was filed with it. It is the Department's understanding that the INS final rule will rescind this proposal and return the priority date establishment to the current method. However, in the course of interagency consultation on this issue, INS indicated that retention of the current method of retaining the priority date would be facilitated if the Department were to discontinue its practice of allowing the substitution of alien beneficiaries on approved labor certifications. This practice has caused the INS innumerable operational problems. Additionally, the elimination of substitution addresses a number of concerns that the Department has had regarding this practice. These concerns are set forth in greater detail below, but include the problems associated with a reputed secondary market involving the sale of labor certifications, the potential for abuse, and the substantial administrative burden of a practice that is not required by the statute. Consequently, the interim final rule eliminates the possibility of employers substituting aliens on approved labor certifications.

Discussion of other comments received pursuant to the NPRM which are relevant to this interim final rule are included in the discussion of the amendments below.

VI. Changes in Interim Final Rule

A. Schedule A

1. General

Schedule A is a list of precertified occupations for which the Director, U.S. Employment Service, previously has determined that there are not sufficient United States workers who are able, willing, qualified, and available and that the wages and working conditions of United States workers similarly employed will not be adversely affected by the employment of aliens in such occupations. 20 CFR 656.10 and 656.22. Schedule A applications are filed directly with INS or DOS, and those agencies determine whether an individual application falls within the scope of the precertified list of occupations. See, *e.g.*, 8 CFR 204.2(i)(4).

In the NPRM, as a result of the Act's changes to the preference groups for employment-based immigrants, the Department proposed to remove from Schedule A three of the four precertified occupational categories currently on Schedule A. Specifically, it was proposed that Groups II, aliens of exceptional ability in the sciences and arts; III, aliens immigrating to the United States to perform religious occupations or to work for a nonprofit religious organization; and IV, intracompany transferees; be eliminated. The NPRM provided that only Group I, physical therapists and nurses, would remain on the precertified list of occupations.

A variety of comments were received on the changes proposed to Schedule A. Two unions expressed the view that because of the labor market pilot program provided in section 122(a) of the Act the entire Schedule A must be eliminated. One or more other commenters expressed the view that unless the Department believes a labor market test is appropriate for the occupations on Schedule A, the entire schedule should be retained. Other commenters addressed whether one or more specific occupational categories now on Schedule A should be retained or eliminated.

2. Group I

The Department has carefully considered the issue as to whether or not retaining Schedule A Group I would be appropriate in light of the pilot program. The Department is of the opinion that the establishment of a pilot program does not require the elimination of Schedule A Group I at this time. Such a change could be proposed, however, when the project's design, methodology and operation are determined at a later date. The pilot program's objectives are to develop a list of up to ten shortage or surplus occupations in order to test the use of labor market and other information as an alternative to the current case-by-case process under section 212(a)(5)(A) of the INA. 8 U.S.C. 1182(a)(5)(A). The three-year pilot program is related to the functioning of Schedule A, Group I and Schedule B, but has very little relationship to Groups II, III, and IV of Schedule A.

Therefore, Group I, physical therapists and nurses, will remain on Schedule A. None of the comments specifically addressing Group I recommended that it be deleted from Schedule A. Two professional organizations representing workers in health care occupations were pleased that the Department was planning to retain Group I.

3. Group II—Aliens of Exceptional Ability in the Sciences and Arts

Twenty-seven commenters addressed the issue of whether or not Group II should be deleted from Schedule A. These commenters included colleges and universities, labor organizations, various businesses, associations, SESAs, and practicing attorneys. The overwhelming majority of comments received addressing the proposed elimination of Group II expressed the view that Group II should be retained. They cited the possibility that aliens able to qualify for the existing Group II would not be able to qualify as aliens with extraordinary ability under the new first INA preference groups. See 8 U.S.C. 1153(b)(1); and 20 CFR 656.10 and 656.22. The Department proposed in its NPRM to delete Group II under the theory that aliens who had utilized Group II would now qualify for Preference Group I and, therefore, there was no need to retain Group II. The comments also indicated that it would be helpful to explain why Group II and the special handling procedures discussed below were originally established.

Group II was established to implement the "equally qualified" provision contained in section 212(a)(14), now section 212(a)(5)(A)(i)(I) and (a)(5)(A)(ii)(II), of the INA for aliens of exceptional ability in the sciences and arts. 8 U.S.C. 1182(a)(5)(A)(i)(I) and (a)(5)(A)(ii)(II). The Department, in establishing Schedule A, Group II, precertified all aliens that could meet the qualifying criteria for exceptional ability in the sciences and arts (except performing arts) at 20 CFR 656.22(d). The INS had the responsibility for determining whether the alien beneficiary of a labor certification application qualified for Group II. The qualifying criteria were not based on any of the extant preference groups. The Secretary's authority in implementing the equally qualified provision derives from section 212(a)(14), now section 212(a)(5)(A)(i)(I) and (a)(5)(A)(ii)(II), not the preference groups. While the Secretary examined other provisions of the INA in establishing Schedule A, Group II, they were instructive, but not controlling.

However, the Department is persuaded that there is a possibility under the INS regulations that all aliens who may be able to qualify under Schedule A, Group II, will not be able to

qualify under the new Preference Group 1. Therefore, Group II is being retained.

4. Group III—Religious Occupations

The NPRM proposed the removal of Group III, Religious Occupations, from Schedule A in view of the addition of religious workers by the Act to the special immigrant categories at section 101(a)(27)(C)(ii) (II) and (III) of the INA. 8 U.S.C. 1101(a)(27)(C)(ii) (II) and (III); see Public Law 101–649, sections 151(a) and 162. Several comments were received on this proposal. The comments ranged from opposition to concurrence in the proposal to remove religious occupations from Schedule A. One commenter proposed that, if Group III is eliminated, an "automatic conversion policy" be established by which an approved Schedule A, Group III, petition becomes an approved special immigrant under the Act. One commenter expressed the view that, since the amendments to the statute adding religious workers to the special immigrant categories are only to be in effect for a three-year period, if Group III is eliminated, the regulations should note that the proposed elimination of Schedule A, Group III, will be reconsidered prior to the expiration of the three-year period if Congress does not reenact these provisions. One commenter pointed out that the new special immigrant categories for religious workers do not preclude the use of the first, second, and third preference groups by such workers. One commenter expressed the concern that the INS proposed definition of religious worker is narrower than Group III in that it is limited to those who have taken formal vows.

The establishment of an "automatic conversion policy" whereby an approved Schedule A, Group III, petition can be considered an approved special immigrant under the INA is not within the purview of DOL.

The INS proposed definition of "religious occupation", unlike its proposed definition of "religious vocation", is not limited to occupations which require the taking of formal vows. 56 FR 30712 (July 5, 1991).

The Department has carefully considered all the reasons advanced for retaining Schedule A, Group III, and has concluded that they do not outweigh the reasons given for deleting Group III in the proposed rule. These reasons are: (1) That it would be inconsistent with Congressional intent to maintain Group III, in view of the limitation contained in the Act of 5,000 visas a year that may be made available to aliens to work in religious occupations; and (2) that the impact of the new special immigrant categories for religious workers can be better evaluated or tested to determine if they should be extended beyond October 1, 1994, if Group III is eliminated.

The Department, however, intends to reconsider the elimination of Group III if the statutory provisions for religious workers are not reenacted by Congress before October 1, 1994.

5. Group IV—Intracompany Transferees

The interim final rule removes Group IV, intracompany transferees, from Schedule A. Few comments were received on the proposal in the NPRM to eliminate Group IV, intracompany transferees, from Schedule A. One commenter expressed the opinion that if Group IV is eliminated, an automatic conversion policy should be adopted whereby an approved Schedule A, Group IV, petition becomes an approved petition under the first employment-based preference which includes multinational executives. See 8 U.S.C. 1153(b)(1). Another commenter expressed the view that maintaining Group IV would maintain an avenue for the admission of intracompany transferees under the second employment-based preference if the first employment-based preference becomes over subscribed. See 8 U.S.C. 1153(b)(2). One or more commenters expressed the view that Group IV should be retained without offering any supporting rationale. Other commenters concurred in the Department's proposal to remove Group IV from Schedule A.

The establishment of an automatic conversion policy for approved Schedule A, Group IV, petitions is not within the purview of the Department. With respect to the view that keeping Group IV will maintain an avenue for intracompany transferees to immigrate under the second preference, it should be noted that none of the Schedule A categories relate directly to any of the employment-based preferences. Compare 8 U.S.C. 1153(b) and 20 CFR 656.10. The determination on whether an alien fits in a preference group is the responsibility of INS.

6. Applications for Schedule A Occupations

A few commenters noted that the alien should continue to be allowed to file a Schedule A application on his/her own behalf under 20 CFR 656.22, because the INA now provides that the Attorney General may waive the job offer requirement when deemed to be in the national interest in the case of certain aliens immigrating pursuant to the second employment-based preference. See 8 U.S.C. 1153(b)(2)(B). In such cases, the alien could file a visa petition under Preference Group 2 on his/her own behalf. Since the INS final rule implementing Preference Group 2 states that waiver of the job offer also constitutes waiver of the requirement for a labor certification, no provision is made in the interim final rule for aliens to file Schedule A labor certification applications on their own behalf.

B. Special Handling Provisions for College and University Teachers and Aliens Represented to Have Exceptional Ability in the Performing Arts

The special handling provisions at 20 CFR 656.21a apply, in relevant part, to applications submitted to employ an alien as a college or university teacher or an alien represented to have exceptional ability in the performing arts. The special handling procedures provide for a more limited test of the labor market than the basic process at 20 CFR 656.21 requires for a labor certification. These procedures do not require that a job order be placed with the local State Employment Security Agency (SESA) office; nor do they require that an advertisement be placed over the name of the SESA; rather, the ad may be published in the name of the employer. Another major difference between the special handling procedures and the basic process, is that the DOL Certifying Officer must determine (pursuant to 8 U.S.C. 1182(a)(5)(A)(i)(I) and (a)(5)(A)(ii)(II)) that the U.S. applicant is at least as qualified (equally qualified) as the alien for the labor certification application before a labor certification can be denied because a U.S. worker is available for the employer's job opportunity. Under the basic labor certification process, which applies to all other occupations for which labor certifications are processed by the Department, the Certifying Officer need find only that the U.S. applicant is qualified (or meets the employer's minimum job requirements) regardless of whether or not the alien is more qualified, to deny a labor certification because qualified U.S. workers are available. See 20 CFR 656.21.

These categories were established for much the same reason that Schedule A, Group II, was established; namely, to implement the "equally qualified" provision with respect to aliens represented to be of exceptional ability in the performing arts and college and university teachers. The Department, when it originally proposed Schedule A, Group II, in 1976, included performing artists in that category. However, they were removed from Group II in the final

rule implementing the "equally qualified" provision that was published in 1977.

Virtually all comments received addressing the proposed elimination of aliens represented to be of exceptional ability in the performing arts expressed the view that this category should be retained. In support, they cited the possibility that aliens that were able to qualify as aliens of exceptional ability in the performing arts would not be able to qualify as aliens with extraordinary ability under the first employment-based preference group. Compare 20 CFR 656.21a(1)(iv) and 8 U.S.C. 1153(b)(1)(A).

The Department is persuaded that it is possible for there to be aliens that would qualify under the Department's special handling procedures for aliens of exceptional ability in the performing arts that would not qualify as aliens with extraordinary ability under the INS regulations. Therefore, the special handling procedures for aliens of exceptional ability in the performing arts are being retained.

As noted above, the Department, when it originally proposed Schedule A, Group II, in 1976, included performing artists in that category. The Department may reconsider this issue and is inviting comments regarding the desirability of including aliens represented to be of exceptional ability in the performing arts (Schedule A, Group II) in a future rulemaking. Once it is determined that the proposed alien beneficiary of a labor certification is of exceptional ability in the performing arts, rarely is an equally qualified U.S. worker found to be available.

C. Notice Provisions

Section 122(b)(1) of the Act supplements the INA, by requiring that an employer applying for permanent alien labor certification send a notice of the application to its employees' bargaining representative(s), or, if no such representative exists, to its employees directly through posting of the notice at conspicuous locations at the worksite in the area of intended employment. 8 U.S.C. 1182 note. This is a slight extension to current practice under the existing rule, which does not mandate notice to a union, but which requires the employer to post a notice of the job opportunity. 20 CFR 656.21(b)(3). The current rule does not require such notice to indicate that an application has been filed for alien employment certification. Section 122(b)(2) of the Act also gives persons the right to submit documentary evidence bearing on the application for certification.

Eleven commenters provided a variety of comments on the notice requirements. As a result of issues raised by commenters, the posting regulation is moved in the final rule from the basic labor certification process at 20 CFR 656.21(b)(3) to the general filing instructions at 20 CFR 656.20. Consistent with the notice provision in the Act, the posting requirement will apply to all applications filed pursuant to §§ 656.21, 656.21a, and 656.22. The Act requires the employer to provide notice in conjunction with permanent labor certification applications and does not exempt applications filed that involve occupations designated for Schedule A (20 CFR 656.10 and 656.22) or special handling (20 CFR 656.21a).

Comments were received from two unions, stating that the Department should require the following in its rule: (1) That the applicant prove actual receipt by the collective bargaining representative of the notice; (2) that the material received must include a copy of the application, so that the recipient will be able to understand what the employer is proposing to do; (3) a paper setting forth the consequences of such a notice; and (4) that any person may file with DOL documentary evidence bearing on the application for certification. One SESA also stated that the notice should indicate that any person may provide documentary evidence bearing on the application.

The overwhelming majority of comments received on the amended posting regulation were in favor of the Department's approach to documenting the posting requirement by requiring that a copy of the notice which was provided to the bargaining representative or posted at the facility must be filed in support of the application. Section 122(b)(1) of the Act does not require the employer to prove actual receipt of the notice by the collective bargaining representative. Additionally, as indicated in the preamble to the NPRM, requiring proof of actual receipt would place the bargaining representative in a position to delay the processing of an Application for Alien Employment Certification. 56 FR 32248 (July 15, 1991). Documentation of the notice requirement is consistent with the requirements of the current posting of notice regulations.

DOL agrees that the notice required by section 122(b)(1) of the Act should state that any person may file documentary evidence bearing on an application; such a statement is consistent with the intent and purpose of the Act. Consequently, the interim final rule amends the posting regulation to include this requirement.

One commenter stated that the word "area" should be defined in proposed § 656.21(b)(3)(1), which states that the employer shall provide notice of the filing of the Application for Alien Employment Certification to the bargaining representative (if any) of the employer's employees in the occupational classification and area in which the alien is sought. One union indicated that the appropriate "bargaining agent must include any labor union which represents employees similarly employed to those of the employer seeking certification, particularly a union which operates a non-discriminatory hiring hall." Congress provided clear direction as to the proper interpretation of the term "area" in section 122(b)(1) of the Act on page 122 of the Conference report (H.R. Rep. 101–955) on the Act by stating, in relevant part, that:

> The notice provisions in the Conference report provide that when a labor certification is filed, the employer must notify the bargaining representative (if any) of the employer in the occupational classification in the area. This means that, for example, if an employer has three sites situated in a particular area (as defined by the Department of Labor), the employer is required to notify the bargaining representative at each of the locations * * *.

The interim final rule requires the employer to notify the bargaining representative at each of its locations in the area of intended employment. The term "area of intended employment" is defined at 20 CFR 656.50 in the interim final regulations as it is defined in the current regulations.

One commenter stated that the proposed posting regulation should not require applicants to report to the employer rather than to the local employment service office. The posted notice requirement, in this regard, is unchanged from the current regulation at 20 CFR 656.21(b)(3)(i). There is no reason to change the current regulation, which requires the posted notice to state that applicants shall report to the employer. The existing provision is consistent with the increased posting requirement of section 122(b) of the Act.

Several commenters were concerned that the proposed regulation at 20 CFR 656.22(g), implementing section 122(b)(2) of the Act, which provides that any person may provide documentary evidence bearing on an application, fails to provide any protection regarding the use of such information by regional Certifying Officers (CO) in making determinations on applications for alien employment certification. The Department believes that such controls

exist in current regulations, decisions issued by the Board of Alien Labor Certification Appeals (BALCA), and administrative directives issues by the Department of Labor. The permanent labor certification regulations at 20 CFR 656.25(c)(2) state that, if a labor certification is not granted, the CO shall state in the Notice of Findings the specific bases upon which the CO intends to deny the application. Several BALCA decisions hold that no matter how dispositive the submitted information or evidence appears to the CO, giving a ground for denial for the first time in a Final Determination will result, in virtually every instance, in the case being remanded to the CO so the employer can be advised of the grounds for denial and be given an opportunity to rebut. See Clarkston Medical Group (87–INA–718), Shaws's Crab House (87–INA–714), The Little Mermaid Restaurant (87–INA–675).

The principle enunciated in various BALCA decisions—that the employer must be given an opportunity to rebut information before it can be used to deny an Application for Alien Employment Certification—has also been stated in administrative directives issued by the Employment and Training Administration. See Technical Assistance Guide No. 656 Labor Certifications (TAG), p. 86; Field Memorandum No. 61–89, Subject: Program Guidance Based on Decisions Issued by Board of Alien Labor Certification Appeals (BALCA), p. 2. Further, experience based on current practice does not indicate that any additional regulations are needed regarding the use of third-party information by Certifying Officers. As stated in the preamble to the NPRM (see 56 FR 32248 (July 15, 1991)), "(c)urrently, such information is accepted and considered, and will continue to be accepted."

The Department recognizes, however, that some informants may be reluctant to provide information absent some promise of confidentiality. Certifying Officers will, on request, not disclose the identity of a person providing information about a labor certification application. Since it cannot be predicted how the BALCA might rule on an employer's request to obtain the identity of an informant in the course of BALCA review, the Certifying Officer cannot guarantee confidentiality in subsequent proceedings.

Two comments from unions urged that BALCA be permitted to decide whether a third party, who has submitted documentary evidence and is dissatisfied with the determination, has made a sufficient showing to warrant participation in an appeal.

The majority of comments that addressed the issue of giving appeal rights to third parties concurred in the Department's interpretation of the Act, *i.e.*, a person who submits information need not be given the right to appeal to BALCA determinations made on labor certification applications. They also commented that the Act does not give "third parties" standing to challenge certifications before BALCA or in court. The Department's interpretation of the Act regarding the standing of third parties before BALCA or in court is reasonable. Consequently, no change in the position is made in the interim final rule.

One commenter recommended that the regulations require, in every case where documentary evidence has been submitted, that the Department, in its determination, explain the weight given the evidence and why the evidence was or was not significant to the determination. The Department has determined that such regulations are not necessary, would impose an unwarranted administrative burden on the Certifying Officer, and would cause further processing delays. The current regulation, at 20 CFR 656.24(b), which specifies the factors the COs shall consider in making determinations on labor certification applications, is adequate and has worked well in the past.

D. Document Transmittal Following the Grant of a Labor Certification

The detailed document transmittal procedures at 20 CFR 656.28 have been simplified substantially, to reflect the deletion of the nonpreference visa category (under which labor certification applications could be filed with a Consular Officer), and that, under the proposed INS regulations, aliens will not be able to file labor certification-based visa petitions on their own behalf under either the second or third employment-based preferences. 8 U.S.C. 1153(b). Although some second preference aliens will be able to file visa petitions on their own behalf, if the INS waives the job offer requirement, it is the Department's understanding that the INS final rule implementing this provision provides that waiver of the job offer also constitutes waiver of the requirement for a labor certification.

The interim final rule provides that, except for occupations on Schedule A (20 CFR 656.10) and for employment as a sheepherder pursuant to 20 CFR 656.21a(b), the CO shall send the certified application containing the official labor certification stamp, supporting documentation, and complete Final Determination form to the employer, or, if appropriate, to the employer's agent, indicating that the employer should file all of the documents with the appropriate INS office.

E. Substitution of Aliens on Approved Labor Certifications

The interim final rule provides that only the alien named on the original Application for Alien Employment Certification may be the beneficiary of a permanent alien labor certification. Under the interim final rule, another alien beneficiary may not be substituted for the original alien. See 20 CFR 656.30(c)(1) and (2)(1991).

This amendment is being made for a variety of reasons, including INS's comments to the Department during this rulemaking that the retention of the current method of setting the priority date for visa preference would be facilitated if the Department discontinued the practice of allowing the substitution of alien beneficiaries on approved labor certifications.[1] It is the Department's understanding that the INS final rule implementing the employment-based preferences will contain a new provision which should go a long way towards alleviating problems with employment-based priority dates. This new provision would allow an alien to retain the priority date of an employment-based petition approved under section 203(b)(1), (2), or (3) of the INA. 8 U.S.C. 1253(b)(1), (2), and (3). The priority date, once established, would apply to subsequent petitions under sections 203(b)(1), (2), or (3).

Additionally, eliminating the practice of allowing the substitution of alien beneficiaries on approved labor certifications addresses a number of concerns the Department has had regarding the substitution of alien beneficiaries. The TAG (Technical Assistance Guide), but not the regulations, had included a process by which the employer could substitute a new alien beneficiary for the original alien. TAG at pps. 104–105.

[1] A visa priority date establishes an immigrant alien's "place in line" for a visa under a particular preference. DOS defers to INS on the date for employment-based visas. 22 CFR 42.53(a)(1991). INS sets the date (except for Schedule A) as the filing date of the Application for Alien Employment Certification with a State Employment Service. 8 CFR 204.2(d)(3)(1991). DOL's regulations also say that a granted certification is valid retroactive to the date of filing. 20 CFR 656.30(b)(1)(1991). Substitution allows an alien to obtain another alien's priority date.

Based on operating experience with the substitution practice, the Department has concluded that substitution of alien beneficiaries is unfair to U.S. workers who may be available for the job at the time of substitution, and to other aliens seeking to enter the United States who have a later priority date. The process also has a significant potential for abuse and manipulation. Further, substitution is not mandated by the INA and had been permitted only as an accommodation to labor certification employer/applicants. After consideration, however, DOL has determined that the benefits of the accommodation are outweighed by the negative factors related to the substitution practice.

Substitution has had a significant potential for abuse, in that the qualifications of the "new" alien are not compared as closely to the minimum qualifications for the job as were the original alien's qualifications.[2] It is fraught with the possibility of a "market" for certifications, where original alien beneficiaries are induced to sell or otherwise relinquish their status to substituted aliens.

Under the substitution process being eliminated, the new alien beneficiary obtains an earlier DOL filing date, and the concomitant INS and Department of State visa priority date, than he or she otherwise would have received, ahead of other aliens who may have been waiting for an immigrant visa for a number of years. Section 20 CFR 656.30(b); 8 CFR 204.1(d)(3); and 22 CFR 42.53(a) (1991). This is fundamentally unfair to other aliens who have been seeking to immigrate to the United States for the purpose of employment.

Another factor in eliminating the substitution of aliens is to streamline and expedite the process. The substitution process has represented a substantial administrative burden on the agency, one that is not required by the statute.

DOL is requesting comments on this amendment.

F. Definition of U.S. Worker

The Office of Special Counsel (OSC), Department of Justice, pointed out to DOL that there may be some inconsistency between the definition of U.S. worker at 20 CFR 656.50 and the statutory definition of a "protected individual" under the INA's unfair immigration-related employment practices provision. 8 U.S.C. 1324b(a)(3). To meet the definition of a "protected individual", one must be a U.S. citizen, a U.S. national, or an alien in one of four citizenship status categories: (1) Permanent resident; (2) temporary resident (including Seasonal and Replenishment Agricultural Workers); (3) refugee; or (4) asylee. To remain a "protected individual", these aliens must complete the naturalization process within a specified amount of time.

The labor certification regulations, in the past, defined U.S. worker as "any worker who, whether a U.S. citizen or alien, is lawfully permitted to work permanently within the United States." 20 CFR 656.50.

The OSC has informed the Department that a number of employers have indicated that they construe 20 CFR 656.50 in a way that conflicts with OSC's interpretation of the INA. Some aliens in the United States may be rejected in favor of the alien beneficiary under existing labor certification regulations. The rejected aliens, however, may be "protected individuals" under 8 U.S.C. 1324b, whose rejection may subject the employer to prosecution for citizenship status discrimination by OSC. This apparent conflict has confused employers attempting to discern their rights and responsibilities when recruiting U.S. workers in accordance with the requirements of the labor certification program.

Employers have informed the Department of Justice that, in certain situations, it is unclear whether or not an employer can reject an alien who falls within the class of "protected individual". Consequently, OSC, in comments on this rulemaking proposed to the Department that the definition of "U.S. worker" at 20 CFR 656.50 be amended to include "protected individuals" under the INA as follows:

> "United States Worker" means any worker who is a U.S. citizen, U.S. national, is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C. 1160(a); 1161(a); or 1255(a)(1); is admitted as a refugee under 8 U.S.C. 1157; or is granted asylum under 8 U.S.C. 1158.

To resolve the apparent conflict, and because, as indicated above, "protected individuals" will retain their status indefinitely (*i.e.*, as long as they complete the required naturalization process within a prescribed amount of time), the Department is amending the definition of "U.S. worker" at 20 CFR 656.50.

G. Technical and Clarifying Amendments

The regulations at 20 CFR part 656 have not been amended to any great extent since December 1980. 45 FR 83933 (December 14, 1980; 52 FR 20596 (June 2, 1987). Therefore, a variety of technical and clarifying amendments are made to part 656 by this interim final rule, to reflect nonsubstantive changes in immigration laws and procedures. These include, for example, changes in the alternative forms of documentation required for physicians by 20 CFR 656.20(d), to make them consistent with the 1981 amendments to other exclusionary provisions of the INA (See Pub. L. 97-116, sec. 5), and updating regional office addresses. See 8 U.S.C. 1182(a)(32); and 20 CFR 656.60.

Regulatory Impact

This rule affects only those employers seeking immigrant workers for permanent employment in the United States. It does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291, 3 CFR 1981 Comp., p. 127, 5 U.S.C. 601 note. One commenter believed largely because of the legal fees that may be involved in filing applications for alien employment certification that this rule would have a major financial impact. However, legal fees are not appropriate to include in any estimation of financial impact. Attorney representation is not necessary to file an Application for Alien Employment Certification.

At the time the proposed rule was published, the Department of Labor notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b) that the rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This document contains no paperwork requirements which mandate clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance at Number 17.203, "Certification for Immigrant Workers."

[2] Certifying Officers do not examine the qualifications of alien beneficiaries to determine if the alien is qualified for the job, and certification of a job opportunity is not a certification of the alien's qualifications. That is a function of INS and the Department of State. Certifying Officers, however, do examine the stated qualifications of the alien to determine whether the employer has overstated the minimum qualifications necessary to perform the job, to the detriment of able, willing, qualified, and available U.S. workers. See 20 CFR 656.21(b)(6) (1991).

List of Subjects in 20 CFR Part 656

Administrative practice and procedure, Aliens, Employment, Employment and Training Administration, Fraud, Labor, Unemployment, and Wages.

Final Rule

Accordingly, part 656 of chapter V of title 20, Code of Federal Regulations, is amended as follows:

PART 656—[AMENDED]

1. The Authority citation for part 656 is revised to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A); 29 U.S.C. 49 *et seq.*; section 122, Pub. L. 101–649, 109 Stat. 4978.

§ 656.1 [Amended]

2. Section 656.1 is amended as follows:

a. In the introductory text of paragraph (a), the phrase "section 212(a)(14) of the Immigration and Nationality Act (Act) (8 U.S.C. 1182(a)(14))" is removed and the phrase "section 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(5)(A))" is added in lieu thereof.

b. In paragraph (c), the phrase "Division of Labor Certifications, United States Employment Service, 601 D Street NW., Washington, DC 20213" is removed and the phrase "Division of Foreign Labor Certifications, United States Employment Service, Department of Labor, Washington, DC 20210." is added in lieu thereof.

3. Section 656.2 is revised to read as follows:

§ 656.2 Description of the Immigration and Nationality Act and of the Department of Labor's role thereunder.

(a)(1) *Description of the Act.* The Immigration and Nationality Act (Act) (8 U.S.C. 1101 *et seq.*) regulates the admission of aliens into the United States. The Act designates the Attorney General and the Secretary of State as the principal administrators of its provisions.

(2) The Immigration and Naturalization Service (INS) performs most of the Attorney General's functions under the Act. See 8 CFR 2.1.

(3) The consular offices of the Department of State throughout the world are generally the initial contact for aliens in foreign countries who wish to come to the United States. These offices determine the type of visa for which an alien may be eligible, obtain visa eligibility documentation, and issue visas.

(b) *Burden of Proof under the Act.* Section 291 of the Act (8 U.S.C. 1361) states in pertinent part, that:

> Whenever any person makes application for a visa or any other documentation required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not subject to exclusion under any provision of this Act * * *.

(c)(1) *Role of the Department of Labor.* The role of the Department of Labor under the Act derives from section 212(a)(5)(A) (8 U.S.C. 1182(a)(5)(A)), which provides that any alien who seeks admission or status as an immigrant for the purpose of employment under paragraph (2) or (3) of section 203(b) of the Act shall be excluded unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(i) There are not sufficient United States workers, who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(ii) The employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(2) The certification is referred to in this part 656 as a "labor certification".

(3) The Department of Labor issues labor certifications in two instances: For the permanent employment of aliens; and for temporary employment of aliens in the United States classified under 8 U.S.C. 1101(a)(15)(H)(ii) pursuant to regulations of the Immigration and Naturalization Service at 8 CFR 214.2(h)(4) and sections 101(a)(15)(H)(ii), 214, and 218 of the Act. See 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188. The Department also administers attestation and labor condition application programs relating to the admission and/or work authorization of the following nonimmigrants: registered nurses (H–1A visas), professionals (H–1B visas), crewmembers performing longshore work (D visas), and students (F–1 visas), classified under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1101(a)(15)(H)(i)(b), 1101(a)(15)(D), and 1101(a)(15)(F), respectively. See also 8 U.S.C. 1184 (c), (m), and (n), and 1288; and Public Law 101–649 section 221, 8 U.S.C. 1184 note. The regulations under this part 656 apply only to labor certifications for permanent employment.

§ 656.10 [Amended]

4. Section 656.10 is amended as follows:

a. In the introductory text of § 656.10, the phrase "Administrator, United States Employment Service (Administrator)," is removed and the phrase "Director, United States Employment Service (Director)" is added in lieu thereof;

b. Paragraphs (c) and (d) of Schedule A are removed.

§ 656.11 [Amended]

5. Section 656.11 is amended as follows:

a. In the introductory text of § 656.11, the word "Administrator" is removed and the word "Director" is added in lieu thereof.

§ 656.20 [Amended]

6. Section 656.20 is amended as follows:

a. In paragraph (d)(1)(i), the phrase "Visa Qualifying Examination (VQE)" is removed and the phrase "Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS)" is added in lieu thereof.

b. In paragraph (d)(1)(ii)(A), the year "1977" is removed and the year "1978" is added in lieu thereof.

c. Paragraph (d)(1)(ii)(B) is removed and paragraph (d)(1)(ii)(C) is redesignated as new paragraph (d)(1)(ii)(B).

d. In redesignated paragraph (d)(1)(ii)(B), the year "1977" is removed and the year "1978" is added in lieu thereof.

e. New paragraphs (g) and (h) are added to read as follows:

§ 656.20 General filing instructions.

* * * * *

(g)(1) In applications filed under §§ 656.21 (Basic Process), 656.21a (Special Handling) and 656.22 (Schedule A), the employer shall document that notice of the filing of the Application for Alien Employment Certification was provided:

(i) To the bargaining representative(s) (if any) of the employer's employees in the occupational classification for which certification of the job opportunity is sought in the employer's location(s) in the area of intended employment.

(ii) If there is no such bargaining representative, by posted notice to the employer's employees at the facility or location of the employment. The notice shall be posted for at least 10 consecutive days. The notice shall be clearly visible and unobstructed while posted and shall be posted in conspicuous places, where the employer's U.S. workers can readily read the posted notice on their way to or from their place of employment. Appropriate locations for posting notices of the job opportunity include, but are not limited to, locations in the

immediate vicinity of the wage and hour notices required by 20 CFR 516.4 or occupational safety and health notices required by 20 CFR 1903.2(a).

(2) In the case of a private household, notice is required under this paragraph (g) only if the household employs one or more U.S. workers at the time the application for labor certification is filed with a local Employment Service office.

(3) Any notice of the filing of an Application for Alien Employment Certification shall:

(i) state that applicants should report to the employer, not to the local Employment Service office;

(ii) State that the notice is being provided as a result of the filing of an application for permanent alien labor certification for the relevant job opportunity; and

(iii) State that any person may provide documentary evidence bearing on the application to the local Employment Service Office and/or the regional Certifying Officer of the Department of Labor.

(4) If an application is filed under § 656.21 and does not involve a request for reduction in recruitment, the notice shall be provided in conjunction with the recruitment required under § 656.21(f) of this part, shall contain the information required for advertisements by §§ 656.21 (g)(3) through (g)(8), and shall contain the information required by paragraph (g)(3) of this section.

(5) If an application is filed under the reduction in recruitment provisions at § 656.21(i) of this part, the notice does not have to be posted in conjunction with the recruitment required under § 656.21(f) of this part, but shall include the information required for advertisements by §§ 656.21 (g)(3) through (g)(8), and the requirements of paragraph (g)(3) of this section;

(6) If an application is filed on behalf of a college and university teacher pursuant to § 656.21a(a)(1)(iii) of this part, the notice shall include the information required for advertisements by § 656.21a(a)(1)(iii)(B), and the requirements of paragraph (g)(3) of this section.

(7) If an application is filed on behalf of an alien represented to be of exceptional ability in the performing arts, the notice required by this paragraph (g) shall include the information required for advertisements by §§ 656.21a(a)(iv)(B) (1) through (7) of this part, and the requirements of paragraph (g)(3) of this section.

(8) If an application is filed under the Schedule A procedures at § 656.22 of this part, the notice shall contain a description of the job and rate of pay, and the requirements of paragraphs (g)(3) (ii) and (iii) of this section.

(h)(1)(i) Any person may submit to the local Employment Service office or to the Certifying Officer documentary evidence bearing on an application for permanent alien labor certification filed under the basic labor certification process at § 656.21 of this part or under the special handling procedures at § 656.21a of this part.

(ii) Documentary evidence submitted pursuant to paragraph (h)(1)(i) of this section may include information on available workers, information on wages and working conditions, and information on the employer's failure to meet terms and conditions with respect to the employment of alien workers and co-workers. The Certifying Officer shall consider this information in making his or her determination.

(2)(ii) Any person may submit to the appropriate INS office documentary evidence of fraud or willful misrepresentation in a Schedule A application filed under § 656.22 of this part or a sheepherder application filed under § 656.21a(b) of this part.

(B) Documentary evidence submitted pursuant to paragraph (h)(2)(i) of this section shall be limited to information relating to possible fraud or willful misrepresentation. The INS may consider this information pursuant to § 656.31 of this part.

§ 656.21 [Amended]

7. Section 656.21 is amended as follows:

a. In the introductory text of paragraph (a) the phrase "Job Service" is removed and the phrase "Employment Service" is added in lieu thereof.

b. In the introductory text of paragraph (b)(1), the phrase "Job Service System" is removed and the phrase "Employment Service System" is added in lieu thereof.

c. Paragraph (b)(3) is removed and paragraphs (b)(4) through (7) are redesignated as paragraphs (b)(3) through (6), respectively.

d. In paragraph (c), the phrase "local job service office" is removed in the two places it appears and the phrase "local office" is added in lieu thereof.

e. In paragraph (e), the phrase "local Job Service office" is removed and the phrase "local office" is added in lieu thereof.

f. In the introductory text of paragraph (f), the phrase "local Job Service office" is removed and the phrase "local office" is added in lieu thereof; and the phrase "a Job Service job order:" is removed and the phrase "an Employment Service job order:" is added in lieu thereof;

g. In paragraph (f)(1), the phrase "regular Job Service recruitment system." is removed and the phrase "regular Employment Service recruitment system." is added in lieu thereof.

h. In paragraph (f)(2), the phrase "Job Service (JS) Regulations (as defined at § 651.7 of this chapter)" is removed and the phrase "Employment Service (ES) Regulations (§ Parts 651–658 of this chapter)" is added in lieu thereof.

i. In paragraph (g)(1), the phrase "Job Service" is removed.

j. In the introductory text of paragraph (i), the phrase "paragraphs (b)(3), (f), and/or (g) of this section" is removed and the phrase "§§ 656.21(f) and/or 656.21(g) of this part" is added in lieu thereof.

k. In paragraph (i)(1)(i), the phrase "Documentary evidence" is removed and the phrase "Documentary evidence (which shall include, but is not limited to, a pre-application notice posted consistent with § 656.20(g) of this part)" is added in lieu thereof.

l. In paragraph (i)(2), the phrase "but without regard to paragraphs (b)(3), (f), (g), and (j)(1) of this section (*i.e.*, the internal notice" is removed and the phrase "but without regard to §§ 656.21(f), 656.21(g), and 656.21(j)(1) of this part is added in lieu thereof.

m. In paragraphs (i)(3), the phrase "State Job Service" is removed and the phrase "State Employment Service" is added in lieu thereof.

n. In paragraph (i)(4), the phrase "local (or State employment service) office" is removed and the phrase "local (or State) Employment Service office" is added in lieu thereof.

o. In paragraph (i)(5), the phrase "paragraphs (b)(3), (f), (g), and (j)(1) of this section (*i.e.*, by internal notice" is removed and the phrase "§§ 656.20(g), 656.21(f), 656.21(g), and 656.21 (j) of this part (*i.e.*, by post-application internal notice" is added in lieu thereof.

p. In paragraph (j)(2), the word "Job" is removed and the word "Employment" is added in lieu thereof.

q. In paragraph (k), the word "Job" is removed and the word "Employment" is added in lieu thereof.

§ 656.21a [Amended]

8. Section 656.21a is amended as follows:

a. In the introductory text of paragraph (a) the word "Job" is removed and the word "Employment" is added in lieu thereof.

b. In paragraph (a)(1)(i) the phrase "The employer shall submit a statement" is removed and the phrase "A statement" is added in lieu thereof.

c. In paragraph (a)(1)(ii), the phrase "The employer shall submit a full description" is removed; and the phrase "A full description" is added in lieu thereof.

d. In paragraph (a)(1)(iii)(E), the Phrase "which are filed after December 31, 1981," and the comma between the word "teachers" and the phrase "shall be filed" are removed.

e. In paragraph (a)(2), the phrase "Job Service" is removed in the two places it appears and the phrase "Employment Service" is added in lieu thereof.

f. In paragraph (a)(3), the phrase "Job Service" is removed.

g. In paragraph (b)(1), the phrase "Job Service" is removed and the phrase "Employment Service" is added in lieu thereof.

h. In paragraph (b)(2)(ii), the phrase "of this part" is added between the citation "§ 656.30" and the phrase "for the significance" in the first sentence; and the word "Administrator" is removed from the second sentence and the word "Director" is added in lieu thereof.

9. Section 656.22 is revised to read as follows:

§ 656.22 Applications for labor certification for Schedule A occupations.

(a) An employer shall apply for a labor certification for a Schedule A occupation by filing an Application for Alien Employment Certification in duplicate with the appropriate Immigration and Naturalization Service office, not with the Department of Labor or a State Employment Service office.

(b) The Application for Alien Employment Certification form shall include:

(1) Evidence of prearranged employment for the alien beneficiary by having an employer complete and sign the job offer description portion of the application form. There is, however, no need for the employer to provide the other documentation required under § 656.21 of this part for non-Schedule A occupations.

(2) Evidence that notice of filing the application for Alien Employment Certification was provided to the bargaining representative or the employer's employees as prescribed in § 656.20(g)(3) of this part.

(c) An employer seeking labor certification under Group I of Schedule A shall file, as part of its labor certification application, documentary evidence of the following:

(1) An employer seeking Schedule A labor certification for an alien to be employed as a physical therapist (§ 656.10(a)(1) of this part) shall file as part of its labor certification application a letter or statement signed by an authorized State physical therapy licensing official in the State of intended employment, stating that the alien is qualified to take that State's written licensing examination for physical therapists. Application for certification of permanent employment as a physical therapist may be made only pursuant to this § 656.22 and not pursuant to §§ 656.21, 656.21a, or 656.23 of this part.

(2) An employer seeking a Schedule A labor certification as a professional nurse (§ 656.10(a)(2) of this part) shall file, as part of its labor certification application, documentation that the alien has passed the Commission on Graduates of Foreign Nursing Schools (CGFN) Examination; or that the alien holds a full and unrestricted (permanent) license to practice nursing in the State of intended employment. Application for certification of employment as a professional nurse may be made only pursuant to this § 656.22(c), and not pursuant to §§ 656.21, 656.21a, or 656.23 of this part.

(d) An employer seeking labor certification on behalf of an alien under Group II of Schedule A shall file, as part of its labor certification application, documentary evidence testifying to the widespread acclaim and international recognition accorded the alien by recognized experts in their field; and documentation showing that the alien's work in that field during the past year did, and the alien's intended work in the United States will, require exceptional ability. In addition, the employer shall file, as part of the labor certification application, documentation concerning the alien from at least two of the following seven groups:

(1) Documentation of the alien's receipt of internationally recognized prizes or awards for excellence in the field for which certification is sought.

(2) Documentation of the alien's membership in international associations, in the field for which certification is sought, which require outstanding achievement of their members, as judged by recognized international experts in their disciplines or fields.

(3) Published material in professional publications about the alien, relating to the alien's work in the field for which certification is sought, which shall include the title, date, and author of such published material.

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which certification is sought.

(5) Evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought.

(6) Evidence of the alien's authorship of published scientific or scholarly articles in the field for which certification is sought, in international professional journals or professional journals with an international circulation.

(7) Evidence of the display of the alien's work, in the field for which certification is sought, at artistic exhibitions in more than one country.

(e) An Immigration Officer shall determine whether the employer and alien have met the applicable requirements of § 656.20 of this part, of this section, and of Schedule A (§ 656.10 of this part); shall review the application; and shall determine whether or not the alien is qualified for and intends to pursue the Schedule A occupation.

(1) The Immigration Officer may request an advisory opinion as to whether the alien is qualified for the Schedule A occupation from the Division of Foreign Labor Certifications, United States Employment Service, Washington, DC 20210.

(2) The Schedule A determination of INS shall be conclusive and final. The employer, therefore, may not make use of the review procedures at § 656.26 of this part.

(f) If the alien qualifies for the occupation, the Immigration Officer shall indicate the occupation on the Application for Alien Employment Certification form. The Immigration Officer then shall promptly forward a copy of the Application for Alien Employment Certification form, without attachments, to the Director, indicating thereon the occupation, the Immigration Officer who made the Schedule A determination, and the date of the determination (see § 656.30 of this part for the significance of this date).

§ 656.23 [Amended]

10. Section 656.23 is amended as follows:

a. In paragraph (a), the word "Administrator" is removed and the word "Director" is added in lieu thereof.

b. In paragraph (b), the word "Administrator" is removed and the word "Director" is added in lieu thereof.

c. In paragraph (c), the word "Administrator" is removed and the word "Director" is added in lieu thereof.

d. In the introductory text to paragraph (d), the phrase "Job Service" is removed and the phrase "the

following documentation:" is removed and the phrase "the following:" is added in lieu thereof.

e. In paragraph (d)(1), the phrase "and (f)" is removed and the phrase "(f), and (g)" is added in lieu thereof.

§ 656.24 [Amended]

11. Section 656.24 is amended as follows:

a. In paragraph (a), the word "Administrator" is removed and the word "Director" is added in lieu thereof.

b. In paragraph (b)(2)(i), the phrase "job service " is removed and the phrase "Local (and State) Employment Service" is added in lieu thereof.

c. In paragraph (b)(2)(iii), the parenthetical phrase "(the 'Job Service')" is removed and the parenthetical phrase "(the 'Employment Service')" is added in lieu thereof.

§ 656.26 [Amended]

12. Section 656.26 is amended as follows:

a. In paragraph (c)(2), the phrase "suite 700—Vanguard Building, 1111 20th Street NW., Washington, DC 20036." is removed and the phrase "800 K Street, NW., suite 400, Washington, DC 20001–8002" is added in lieu thereof.

b. In paragraph (c)(5), the word "Administrator" is removed and the word "Director" is added in lieu thereof.

13. Section 656.28 is revised to read as follows:

§ 656.28 Document transmittal following the grant of a labor certification.

If a labor certification is granted, except for labor certifications for occupations on *Schedule A* (§ 656.10) and for employment as a sheepherder pursuant to § 656.21a(b), the Certifying Officer shall send the certified application containing the official labor certification stamp, supporting documentation, and complete Final Determination form to the employer, or, if appropriate, to the employer's agent, indicating that the employer should file all the documents with the appropriate INS office.

§ 656.30 [Amended]

14. Section 656.30 is amended as follows:

a. In paragraph (b)(1) the phrase "local job service office date stamped" is removed and the phrase "local Employment Service office date-stamped" is added in lieu thereof.

b. In paragraph (c)(1), the phrase ", the alien for whom certification was granted," is added between the word "form" and the phrase "and throughout".

c. In paragraph (c)(2), the phrase ", the alien for whom certification was granted," is added between the word "opportunity" and the phrase "and for the area".

d. In paragraph (d), the phrase "Regional Administrator, Employment and Training Administration or to the Administrator, the Regional Administrator or Administrator," is removed and the phrase "RA or to the Director, the RA or Director," is added in lieu thereof.

§ 656.50 [Amended]

15. Section 656.50 is amended as follows:

a. The definition of Administrator is removed.

b. In the definition of *Area of Intended Employment*, the phrase "Standard Metropolitan Statistical Area (SMSA), any place within the SMSA" is removed from the second sentence and the phrase "Metropolitan Statistical Area (MSA), any place within the MSA" is added in lieu thereof.

c. In the definition of *Certifying Officer*, paragraph (2) is removed and paragraphs (3) and (4) are redesignated as paragraphs (2) and (3), respectively.

d. In the definition of "Local Job Service Office", the phrase "Job Service" is removed the four times it appears therein and the phrase "Employment Service" is added in lieu thereof in each instance; and the parenthetical phrase "(also known as a State employment service)" is removed and the parenthetical phrase "(also known as a State Employment Security Agency (SESA))" is added in lieu thereof.

e. In the definition of *Schedule A*, the word "Administrator" is removed and the word "Director" is added in lieu thereof.

f. In the definition of *Schedule B*, the word "Administrator" is removed and the word "Director" is added in lieu thereof.

g. The definition of *HHS* is removed.

h. In the definition of *United States Employment Service (USES)* the phrase "of 1933" is removed; and the parenthetical phrase "(the Job Service (JS)" is removed and the parenthetical phrase "(the Employment Service (ES) System)" is added in lieu thereof.

i. A definition of *Director* is added in alphabetical order; and the definition of "United States worker" is revised; to read as follows:

§ 656.50 Definition, for the purposes of this part, of terms used in this part.

* * * * *

Director means the chief official of the United States Employment Service or the Director's designee.

* * * * *

United States worker means any worker who is a U.S. citizen; is a U.S. national; is lawfully admitted for permanent residence; is granted the status of an alien lawfully admitted for permanent residence under 8 U.S.C. 1160(a), 1161(a), or 1255a(a)(1); is admitted as a refugee under 8 U.S.C. 1157; or is granted asylum under 8 U.S.C. 1158.

§ 656.50 [Redesignated as § 656.3]

16. Section 656.50 is redesignated as § 656.3 of subpart A.

Subpart E—[Reserved]

17. Subpart E is removed and reserved.

§ 656.60 [Amended]

18. Section 656.60 is amended as follows:

a. In the address of Region II, the phrase "and Puerto Rico): Room 3713, 1515 Broadway, New York, NY 10036." is removed and the phrase "Puerto Rico, and the Virgin Islands): 201 Varick Street, room 775, New York, NY 10014." is added in lieu thereof.

b. In the address of Region VI, the number "555" is removed and the number "525" is added in lieu thereof.

c. In the address of Region IX, the phrase "Box 36084, Federal Office Building, 450 Golden Gate Avenue, San Francisco, CA 94102" is removed and the phrase "71 Stevenson Street, room 830, San Francisco, CA 94119" is added in lieu thereof.

Signed at Washington, DC, this 16th day of October 1991.

Lynn Martin,

Secretary of Labor.

[FR Doc. 91–25317 Filed 10–22–91; 8:45 am]

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Wednesday
October 23, 1991

Part III

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 440

Weatherization Assistance Program for Low-Income Persons; Proposed Rule

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 440

[Docket No. CE-RM-91-110]

Weatherization Assistance Program for Low-Income Persons

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Department of Energy (DOE) is issuing a notice of proposed rulemaking for the Weatherization Assistance Program for Low-Income Persons to implement recent statutory changes enacted as the State Energy Efficiency Programs Improvement Act of 1990, Public Law 101-440. In addition to these statutory changes, DOE is proposing to add other changes based on program experience gained over the past five years since issuance of the last version of the regulations. These changes add clarifying language or delete obsolete language in the regulation which will assist in providing uniform interpretation of this regulation by State and local agencies administering the program. The changes proposed in this rulemaking will give States and local agencies additional flexibility in addressing the particular weatherization needs of their low-income citizens.

DATES: Written comments (6 copies) must be received on or before January 7, 1992.

Public hearings will be held in:

San Francisco, CA on November 20, 1991, at 8:30 a.m.
Request to speak at the hearing by 11/15/91.

Baltimore, MD on December 13, 1991, at 8:30 a.m.
Request to speak at the hearing by 12/11/91.

Dallas, TX on December 17, 1991, at 9:30 a.m.
Request to speak at the hearing by 12/13/91.

Chicago, IL on December 19, 1991, at 9:30 a.m.
Request to speak at the hearing by 12/13/91.

ADDRESSES: All written comments (6 copies) and requests to speak at the hearings should be addressed to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets CE-90, room 6B-025, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3012. In the event any person wishing to submit a written comment cannot provide six copies, alternative arrangements can be made in advance with the Hearings and Dockets Office.

The hearings will be held at the following locations:

San Francisco, CA: Holiday Inn Golden Gateway, 1500 Van Ness Avenue, Emerald Ballroom.

Baltimore, MD: Baltimore Marriott Inner Harbor Hotel, Pratt and Eutaw Streets, Stadium Ballroom (Mezzanine Level).

Dallas, TX: Earle Cabel Federal Building, 1100 Commerce Street, room 1B16A (1st Floor).

Chicago, IL: Insurance Exchange Building, 175 West Jackson (at Wells), room 564 (5th Floor).

FOR FURTHER INFORMATION CONTACT: James Gardner or Greg Reamy, Weatherization Assistance Program Division, U.S. Department of Energy, Mail Stop CE-532, 5G-023, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2210.

Neal J. Strauss or Vivian Lewis, Office of General Counsel, Conservation and Regulations, Mail Stop GC-41, 6B-256, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy (DOE or Department) today proposes to revise the program regulations for the Weatherization Assistance Program for Low-Income Persons (WAP) which are codified in 10 CFR part 440 and which are authorized by title III of the Energy Conservation and Production Act, as amended (Act), 42 U.S.C. 6561, *et seq.* The principal purpose of the regulatory amendments proposed today is to implement amendments to the Act by the State Energy Efficiency Programs Improvement Act of 1990 (Amending Act) (Pub. L. 101-440). As the new statutory amendments require, today's proposal would: (1) Add specific cooling measures to the program; (2) add provisions for a waiver to the requirement to spend an average of 40 percent of grant funds for weatherization materials; (3) add provisions for annual adjustment of the $1,600 statewide average per home expenditure; (4) allow local agencies receiving grants of less than $350,000 to use up to an additional 5 percent for administrative purposes; (5) require States to ensure tenants' protection from rent increases and related actions due solely to weatherization work and allow States to require landlord participation in the weatherization of multifamily buildings; (6) repeal the performance fund; (7) encourage States to actively seek non-Federal funds to increase the amount of funds available for low-income weatherization; and (8) require States to report annually on the average costs incurred in weatherization of individual dwelling units, the average size of the dwellings weatherized, and the average income of households receiving assistance.

WAP is a State grant program. A series of completed State evaluations have shown that certain traditional approaches to weatherization are not always the most cost-effective. Because of this finding, many States made great efforts to identify solutions and customize their respective programs to meet the needs of their low-income citizens. The development of new and innovative energy audits has led to increased opportunities for energy savings. New technologies introduced into the program, such as blower doors, furnace testing, inside sealing, and the like have had a dramatic impact on the weatherization techniques now used in the program. Increased emphasis on the quality of the installation of materials on a home has also led to improved weatherization techniques. Additionally, increased awareness on the part of many utilities across the country has led them to participate with States as partners in addressing the needs of their low-income residents. The leveraging of resources into the program by States could be a key component in offsetting the loss of petroleum violation escrow funds (PVE) on which many States have come to rely. This rulemaking recognizes the value of efforts already undertaken by many States and explicitly provides for continuation of those efforts.[1]

States and local agencies are reminded that the selection of homes to be weatherized affects the overall cost-effectiveness of the program. The energy auditor should examine the condition of each home to insure that the home in which the eligible person lives will receive the maximum benefit of the weatherization services provided. Homes that need rehabilitation (extensive repairs), are not the most cost-effective sites for weatherization until after rehabilitation work has been completed. Such homes should be referred to other Federal or State programs which provide for

[1] Petroleum violation escrow funds are funds that redress injuries that the States' citizens suffered from violations of former Federal petroleum price and allocation regulations which were promulgated pursuant to the Emergency Petroleum Allocation Act, 15 U.S.C. 751 et seq. The States acting as trustees, use these funds in energy related activities under WAP and other specific programs.

rehabilitation. Furthermore, States should work toward implementing advanced energy audits which not only ensure the selection of the most cost-effective measures to install on a home, but also ensure that the priority of those eligible homes to be weatherized will result in maximum program effectiveness.

In addition to the parts of today's proposal to implement the amendments to the Act, DOE is proposing to make certain clarifications, corrections, and other non-statutory changes to the existing rule. This action is necessitated by the evolution of the program since the last rulemaking issued in 1985. These changes will help States by clarifying sections to the rule, thereby encouraging a uniform interpretation and application of the program requirements. DOE has also updated appendix A to include all new materials approved for use in the program through December 1990 and the standards for those materials. The definitions section of the program regulations has been clarified and, where needed, new definitions have been added which will provide a clearer and more concise meaning to States and local agencies who must interpret these regulations. Other sections applying to energy audits, allowable expenditures, and subgrantees have been clarified to enhance their meanings; and certain obsolete items have been deleted.

DOE also proposes that, effective with program year 1993, all energy audit procedures, including Project Retro-Tech, would have to meet additional criteria. These criteria would include requiring States to discount energy cost savings to present value, establish a limit on infiltration expenditures, and include all costs in their cost-effectiveness tests.

DOE decided not to propose any changes to the allocation formula in § 440.10 because Congress considered the arguments for and against such changes and ultimately did not make any of those changes part of the Amending Act. However, as directed by the Amending Act, DOE annually will update data used in the formula. Such updating does not require amendments to the regulations. DOE will continue to use only data from recognized national sources, such as the Census Bureau and the National Oceanographic and Atmospheric Administration in the Department of Commerce, and the Energy Information Administration in the DOE.

II. Proposed Amendments to the Program

Section 440.3 Definitions

DOE has proposed a definition for "children" in § 440.3 which is the same as the one used by the Department of Health and Human Services' (HHS) Aid for Dependent Children Program, 45 CFR 233.90. DOE is proposing this definition to help facilitate the eligibility certification process for States and subgrantees that administer both the HHS and DOE weatherization programs.

DOE is proposing to delete the definition for "Operations Office Manager" and replace it with "Support Office Director" as a result of DOE field realignment.

DOE is proposing a change in the definition for "separate living quarters" which would include a reference to "shelters" for homeless persons. Additionally, a definition for "shelter" is proposed which would specifically address units that house individuals on a temporary basis. The current regulation does not specifically state that these units can be weatherized. This has led to confusion among States when addressing this issue. Therefore, DOE is proposing language at § 440.22(d) that specifically would authorize weatherization of shelters and explain their eligibility.

DOE also proposes to amend § 440.3, as required by the Amending Act, to allow States to include under "weatherization materials" the following items: Cooling efficiency modifications, which include replacement air-conditioners, ventilation equipment, screening, window films, and shading devices. Standards for purchasing these materials are listed in appendix A. Adding these measures will allow States, especially in warm climate areas, to better address weatherization priorities where reducing energy consumption for cooling requirements is more important than reducing energy consumption for heating requirements.

With respect to air-conditioners, DOE proposes to allow the replacement of existing ones only. Air-conditioners include window units, central units, and heat pumps which perform a dual heating/cooling function. States which opt to include replacement air-conditioners would have to follow applicable Federal, State, and local environmental laws covering the disposal of old air-conditioners due to the types of chemicals used in these units. As required in selecting any other measure, the energy audit procedure must determine whether an air-conditioner should be replaced.

With respect to ventilation equipment, DOE proposes to amend Appendix A to include ceiling fans, attic fans, whole house fans, and evaporative coolers. DOE does not propose to include certain types of ventilation equipment, such as table fans and window fans, because of their energy inefficiency and lack of cost effectiveness.

With respect to shading devices, DOE believes this measure should continue to be limited to items such as awnings and louvers which are already listed in appendix A. DOE encourages comments on shading devices to determine what other options this category may include.

DOE reminds States that, pursuant to § 440.21(a), they may submit requests at any time for DOE to consider adding new materials or technologies to the program.

Section 440.12 State Application

DOE proposes to amend this section to require States to include as a part of their applications a rental plan implementing the provisions in § 440.22(b)(3). This plan should address the policies each State will use in addressing the weatherization of rental units and the manner of insuring that the near-term benefits of weatherization go primarily to tenants. The plan should also indicate how other rental weatherization requirements will be addressed.

Section 440.13 Local Applications

DOE is proposing to amend § 440.13 which describes what actions will take place in the event a local applicant becomes a direct grantee of the weatherization program. The amendment is largely technical and would conform § 440.13 to the appeal procedures recently issued as amendments to § 440.30. 55 FR 41322 (October 10, 1990).

Section 440.14 State Plans

DOE proposes to amend this section to require States to include the criteria they will use for providing additional administrative funds to subgrantees as specified in § 440.18(f). Also, § 440.14(b)(9)(xii) is proposed to be amended to include the phrase "for use statewide" when referring to the definition of low-income. This would clarify that a State must use the same eligibility criteria throughout the State. That is, when the State determines what income levels it will use for determining low-income, those income levels would be applied uniformly throughout the State. The current regulation defines low-income using three categories and gives the impression that the State can

use any or all of the categories without making clear that the same categories must be used throughout the State. DOE wishes to make clear that a State may not use more than one definition of low-income.

Consistent with the new statutory amendments, DOE proposes to include a provision which allows DOE to approve established plans and procedures submitted by States as a part of the State plan, for using Federal funds to increase the amount of weatherization assistance that a State obtains from non-Federal sources, including private sources. States may take a percentage of their base grant (including PVE funds used under the weatherization program) or a percentage of their training and technical assistance funds or a portion of both to undertake leveraging activities. States must identify in their annual plans the specific amount of funds, details of how those funds will be used for obtaining non-Federal resources for their weatherization programs, and the expected leveraging effect from the use of those Federal funds. States must also explain how the amount to be used for leveraging is reasonable when considered in the context of § 440.15(b) of the regulation which requires funds to be allocated on the basis of relative need in each area.

DOE would like to encourage States and other interested parties to comment on possible changes that could be made to this section to eliminate duplication, reduce unnecessary paperwork, and help ease the reporting requirements consistent with the governing Act. While DOE is bound by the Act to certain specific content requirements, this rulemaking offers States the opportunity to propose ideas on streamlining this section to help reduce the amount of time and effort that goes into preparing a State plan.

Section 440.15 Subgrantees

DOE proposes to amend § 440.15 to include in paragraph (b) the phrase "all areas of the State" when referring to the State disbursement of program funds under this program on the basis of relative need. In the past, some States have proposed to serve only certain areas or populations within their respective States because of limited funding or other reasons. By adding the phrase "all areas of the State," DOE intends to clarify the reference made in section 414 of the Act that refers to allocating financial assistance among low-income persons throughout the State. States must ensure that all areas of the State that have populations of persons eligible for this program are served. These areas may be served with funds other than DOE, i.e., other Federal, State, utility, etc. However, those other sources of funds must be identified in the State plan.

DOE further proposes to clarify subgrantee selection and removal procedures in § 440.15 by adding a new paragraph (e), which would make clear that a subgrantee found in non-compliance must be offered a hearing as part of the removal or defunding process. It has always been DOE's interpretation of the Act that the same procedure (public hearing) must be used in removing a subgrantee as was used in selecting a subgrantee. In the current regulation, this provision is not explicit, and consequently, grantees have sometimes been unsure of procedural requirements when they determine to replace a subgrantee for non-compliance or for other reasons. Grantees should also be aware that changing subgrantees at the beginning of or during a grant cycle is considered a removal for purposes of this section.

Section 440.16 Minimum Program Requirements

DOE proposes to add clarifying language to § 440.16(b) to allow States to include "children" as a priority group among those receiving weatherization services. This proposal is consistent with the recent amendment of section 411(b) to add the word "children" to the legislative statement of "Purpose and Findings." Section 414(b)(2) of the Act establishes a priority on providing weatherization services for elderly and handicapped persons and such priority as the applicant determines is appropriate for single-family or other high-energy consuming dwelling units. Since the reference to "children" is not contained in section 414(b)(2) of the Act, DOE determined that States are not required to include children at the same level of priority as the elderly and handicapped, although under the proposed change to § 440.16(b), they may do so if they wish.

Section 440.16(d) is proposed to be amended to include the phrase "when such personnel are generally available" in the reference to securing the services of volunteers. This phrase is meant to clarify that, in areas where it is difficult to secure the services of volunteers, subgrantees need not expend limited resources on efforts to find such workers.

Section 440.16(g) is proposed to be amended to include the phrase "all weatherization materials have been installed." This language, DOE believes, will clarify that, before a home is reported as complete, all of the materials associated with its weatherization must have been installed and the unit must, in fact, be complete.

Section 440.16(h) is proposed to be added to require that procedures are developed by the State to ensure that subgrantees address health and safety concerns related to weatherization. DOE is not proposing at this time that States address any specific health or safety concern. Rather, DOE is proposing that each State should develop procedures which cover health and safety concerns applicable to the respective State. This proposal is consistent with the addition of the phrase "health and safety" in the "Purpose and Findings" in § 411(b) of the Act. Health and safety concerns related to weatherization of dwellings occupied by low-income clients are of special interest to the Congress, and DOE believes they are of concern to all persons and organizations associated with the weatherization program. DOE further believes that States should carefully examine their programs to ensure these concerns are being addressed. DOE may periodically provide guidance on health and safety issues for States' use.

Section 440.18 Allowable Expenditures

Section 415(a) of the Act authorizes DOE to grant a waiver from the 40 percent statewide average for weatherization materials expenditures of this section. DOE is proposing amendment of § 440.18(a) to allow for the waiver provision. The criteria for the waiver are discussed in detail in the discussion of the proposed amendments to § 440.21.

DOE proposes to amend § 440.18(b)(1) to incorporate provisions of section 415(c) of the Act which provides that, beginning with fiscal year 1991, the statewide average of $1600 per dwelling unit shall be adjusted annually by increasing the previous year limitation amount by the lesser of: (1) The percentage increase in the Consumer Price Index for the previous year or (2) three percent. DOE will notify all grantees of the new expenditure limit in grant guidance that is issued each year.

In addition to this annual increase, the Act provides that DOE shall, upon application by a State, establish a "separate" average per dwelling unit limitation for dwelling units in those States which (1) conform to program requirements and (2) in addition to any other weatherization modifications, have "furnace or cooling efficiency modifications" made with program funds. The phrase "furnace efficiency modifications" is not defined by the Act, but the legislative history indicates it is a term of art which refers to capital-

intensive furnace or cooling efficiency modifications. DOE has proposed revisions to § 440.18(b)(2) to incorporate this waiver. See 1990 U.S. Code Congressional and Administrative News, 1658–1659.

States which wish to apply for an increase to the per dwelling unit average must propose to do, as a minimum, capital intensive furnace or cooling efficiency modifications defined in § 440.3. Those States which elect to perform only low-cost furnace or cooling efficiency modifications such as tune-ups or other relatively low-cost efficiency improvements must include them within the current limitations of the statewide per dwelling unit average as stated in § 440.18(b)(1).

Proposed § 440.18(b)(2) deals with the application requirements for a "separate" statewide average for dwelling units with furnace and cooling efficiency modifications. Under that section, all State applications to increase the per dwelling unit average would have to be accompanied by supporting documentation on the costs associated with furnace or cooling efficiency modifications in that State. This separate average would apply only to those homes selected for capital intensive furnace and cooling efficiency modifications.

This average cannot be combined with the adjusted $1600 base average to create a new single statewide average because § 440.15 (c)(4)(A) of the Act specifically requires a "separate" average "in addition to" the base average. 42 U.S.C. 6865 (c)(4)(A). For example, State X plans to weatherize 1,000 units, and estimates that 30 percent of the units will receive furnace or cooling measures that qualify for the separate higher average. The State estimates the average cost for the 300 units to be $3,000, and DOE approves the State's application as a separate average for those units. The remaining 700 units that do not receive the qualifying furnace or cooling modifications cannot exceed the $1600 average as adjusted annually under § 440.18(b)(1). The States would have to maintain and report to DOE on each of the averages one average for those dwellings which qualify for the higher average expenditure and the average discussed in § 440.18(b)(1) for those dwellings which do not.

DOE proposes to add § 440.18(c)(12) to allow the costs of weatherization program financial audits to be charged as a separate program support cost. Those costs are currently charged under the administrative cost category, and the percentage limitation on that category is an undesirable incentive to skimp on financial audits. This proposed amendment would enable States to press for more rigorous financial auditing to prevent waste.

The Amending Act provides that States may increase the percentage of subgrantee administrative funds up to an additional 5 percent for those subgrantees receiving grants of less than $350,000 in DOE appropriated dollars. DOE proposes to implement this provision by amending the language in § 440.18(d) to require States to provide in their plans the criteria they will use in carrying out this provision. While DOE encourages States to develop their own guidelines for the increase, the procedures for deciding which of the eligible subgrantees should receive additional funds and what additional percentage they may use must be addressed as a part of the plan and will be reviewed by DOE for reasonableness. The limit for maximum administrative expenditures by a State remains unchanged at 5 percent.

DOE proposes to amend § 440.18 by adding paragraph (c)(14) which would permit the expenditure of funds for leveraging activities by States discussed above in the explanation of proposed amendments to § 440.14.

Section 440.18(e)(2)(iii) is proposed to be amended to extend from September 30, 1979, to September 30, 1991, the cut-off date under which States may reweatherize a unit. All of the units affected by this two-year extension received less than $800 worth of energy conservation improvements because the rise in the expenditure limit per home did not take full effect until 1981. States are reminded that, when addressing reweatherization, a new audit must be performed on each home taking into account any previous improvements to the dwelling; these units must be reported to DOE separately from the completion of homes that have not been reweatherized. As is the current practice, these reweatherized units cannot be counted as completions for the purposes of § 440.18.

Section 440.21 Standards and Techniques for Weatherization

DOE proposes to add clarifying language to § 440.21(a) to make clear that only those weatherization materials that are listed in appendix A of this regulation can be purchased with DOE funds. Some subgrantees and potential material suppliers continue to believe that appendix A applies only to materials listed there. They believe materials not listed may be purchased and installed without the need to meet any standard. DOE believes this clarification will ensure that only weatherization materials that are listed in the appendix may be purchased with DOE monies. However, a State may submit an unlisted material to DOE at any time for evaluation and possible addition to appendix A. Please note, however, that materials used to complete incidental repairs generally are not weatherization materials and, therefore, are not required to be listed or to meet the standards in appendix A.

Section 415(a) of the Act authorizes DOE to grant a waiver from the 40 percent statewide average for weatherization materials expenditures if the State uses more sophisticated on-site energy audit procedures, such as blower doors or equivalent techniques, and an appropriate discount rate to determine the most cost-effective measures for particular dwellings. DOE is proposing to amend § 440.21 of the rule to specify the types of procedures States must follow to qualify for this waiver. These amendments would become effective as soon as possible after issuance of the final rule in order to permit States to obtain waivers.

Under the proposed rule, States that do not choose to seek a waiver from the 40 percent minimum would be able to continue to use simplified procedures, based on Project Retro-Tech or other similar energy audit techniques, for determining the cost-effectiveness of measures applicable to typical homes within the State. These simplified procedures do not require on-site energy audits, nor do they require the use of blower doors or similar techniques to evaluate the need for general heat waste reduction measures. DOE is proposing, however, to modify the existing requirements for such simplified procedures so as to ensure that States: In typical homes, appropriately discount estimated cost savings and limit expenditures on general heat waste reduction measures unless an on-site evaluation of the need for such measures is performed. Because these modified minimum requirements would apply to every State unless the State has already adopted the more sophisticated procedures required for a waiver, DOE is proposing to delay their effective date until April 1, 1993.

There follows a more detailed explanation of these proposed modifications to the existing rule.

Currently, § 440.21 contains a very limited cost effectiveness test as part of Project Retro-Tech (the minimum required energy audit procedure). It provides, with one very significant exception, for testing the cost effectiveness of, and assigning priorities among, weatherization materials at least

on the basis of simple savings-to-investment ratios. Project Retro-Tech is the audit procedure used in approximately 35 States. The simple savings-to-investment ratio is of limited value for the following reasons: (1) It is not applied to "general heat waste reduction" ("infiltration" reduction) weatherization materials; (2) it is restricted to labor and material costs and excludes other allowable costs such as the costs of tools and transportation; and (3) it does not discount estimated future fuel cost savings to present value and thus exaggerates the value of those future savings relative to present year investment costs. It is therefore theoretically possible to expend a significant portion of the limited budget for each dwelling unit on general heat waste reduction (such as closing off a fireplace) and incidental repairs (such as roof repair) without first estimating whether the resulting fuel cost savings over the useful life of the weatherization materials will pay for the total investment costs.

Approximately, 15 States have received DOE approval for alternative audits which are more rigorous than Project Retro-Tech. Most of the alternative audits contain more demanding requirements for testing the cost effectiveness of proposed investments in a dwelling unit. Nevertheless, even a State which receives approval for such requirements must still conform to the statutory requirement to expend 40 percent of the funds on materials.

Section 415(a) of the Act, which underlies § 440.21, has now been amended to require the Secretary to approve a waiver of the 40 percent material requirement for some or all of a State's subgrantees if the State plan includes energy audit procedures and techniques which meet four criteria. These criteria are far more demanding than Project Retro-Tech, and some of them may cause those States with approved alternative audits to make what are probably minor alterations in order to qualify for the waiver.

The first criterion for energy audit procedures and techniques is consistency with standards established after consultation with the State Energy Advisory Board (STEAB). (DOE is currently in the process of chartering and otherwise establishing STEAB which will be consulted prior to issuance of the notice of final rulemaking.) DOE is proposing today, as a general standard, that energy audits would have to be performed on any dwelling to be weatherized and must include advanced diagnostic and assessment techniques which meet sound engineering principles. DOE would interpret that standard as meaning that, at a minimum, an audit would have to include: (1) Use of a blower door directed procedure at the dwelling under analysis or its equivalent for achieving cost-effective reductions in air infiltration unless use of a blower door or equivalent technique was judged to be unsafe or not practical for a particular dwelling; (2) analysis of the performance of the dwelling's heating and/or cooling system; and (3) determining the priority of mechanical work (other than furnace tune-ups) on the heating and/or cooling system. DOE would also interpret that standard as precluding acceptance of an audit that did not include mechanical work (other than furnace tune-up) on the heating and/or cooling system of a dwelling without stating a good cause, e.g., that few homes, if any, in the State contain heating or cooling systems to which mechanical work other than furnace tune-ups would apply. On an ongoing basis, DOE is working on improved energy audit techniques and procedures. From time to time, DOE will update its interpretation of the advanced diagnostic and assessment techniques which meet sound engineering principles.

The second, third, and fourth criteria are related to each other. The second criterion requires that the energy audit establish priorities for selection of weatherization measures based on their cost and contribution to energy efficiency. The third criterion requires that the energy audit measure the energy requirement of individual dwellings and the "rate of return" of the "total conservation investment" in the dwelling. The fourth criterion requires adjustment of estimated annual fuel cost savings to account for interaction, if any, among energy efficiency measures.

As a result of these criteria, DOE is proposing that the energy auditor determine average annual energy use for space heating and cooling from utility bills or standard engineering calculations and use the resulting data to focus on those weatherization measures most likely to prove cost-effective. DOE is also proposing a more rigorous method of testing for cost effectiveness and assigning priorities based on that testing.

The extent of rigor is based on the congressional choice of words and related legislative history. The Amending Act requires use of a "rate of return" on the "total conservation investment" in a dwelling. A rate of return is useful as a test of cost effectiveness only if it can be compared to a discount rate. The House Committee report in discussing the waiver provision of the Act, indicates that Congress intended to authorize more freedom from the 40 percent materials expenditure requirement in choosing weatherization measures only so long as more comprehensive economic analysis is used in testing the estimated cost effectiveness of a proposed package of investments to upgrade the energy efficiency of a dwelling unit. See 1990 U.S. Code Congressional and Administrative News, 1658.

In developing today's proposal, DOE considered two basic approaches to interpreting and applying the statutory provision for measuring the rate of return for the total conservation investment in a dwelling unit. The first approach would involve calculating directly the exact rate of return taking into account all relevant cash flows. That approach is illustrated in DOE's life-cycle cost methodology which applies to investments in upgrading the energy cost efficiency of Federal buildings.

The general principles of the life-cycle cost methodology for Federal buildings are set forth in 10 CFR part 436. Federal agencies are required to consider the significant effects, if any, that proposed energy conservation measures would have on cash flows during the useful life of the measure or 25 years whichever is less. The methodology provides for consideration of significant effects on non-energy cash flows such as non-energy operation and maintenance expenses, replacement costs, and salvage values. It also provides for discounting estimated future cash flows to present value and for escalating future energy costs according to the estimated rate of energy price increases over inflation during the long term. Both the discount rate and the energy cost escalation rate are revised annually by DOE. The operational details of applying the methodology are described in the accompanying Life-Cycle Cost Manual for the Federal Energy Management Program (NIST 85–3272) which is published and updated annually by the National Institute of Standards and Technology (NIST). NIST has prepared menu-driven software for computerized life-cycle cost analysis and gives seminars around the United States for those who must use life-cycle cost analysis or are interested in it. Over the last ten years, the Federal agencies have gradually shifted from simpler, less exact measures of cost effectiveness to life-cycle cost analysis.

Generally, the discount rate for the life-cycle cost methodology is based on an annual average of U.S. Treasury bonds over the preceding 12 months, less inflation as estimated by the President's Council of Economic Advisers. The development of the method for annually revising the discount rate, as well as the general background of the life-cycle cost methodology, is described at 55 FR 2590 (January 25, 1990) and 55 FR 48217 (November 20, 1990). For Fiscal Year 1991, the discount rate is a real 4.7 percent.

The other approach to complying with the requirement to measure the rate of return on the total conservation investment is indirect. It involves calculation of a fuel cost saving to investment cost ratio with fuel cost savings from all weatherization materials discounted to present value, and all investment costs included. Except for "general heat waste reduction" weatherization materials, the first step would be calculation of the discounted savings to investment ratio for each material. (States could continue to allow certain expenditures on "general heat waste reduction" weatherization materials to be assumed cost effective and to have an assumed number one ranking.) Then the materials would be rank ordered in descending order of the respective ratios, as adjusted for interaction, if any, among materials. (Significant interaction often occurs between mechanical weatherization materials and materials to modify the building envelope.) If an incidental repair were necessarily related to installation of a weatherization material, the cost of that repair would usually be included in the denominator of the ratio. (An example would be a roof repair incident to installation of attic insulation.) Finally, a composite discounted savings to investment ratio would be calculated with the sum of the fuel cost savings for all materials being considered in the numerator and the sum of all investment costs (including those allowable costs not necessarily related to any particular weatherization material) being considered in the denominator.

With regard to "general heat waste reduction" materials, all investment costs would have to be included in the composite ratio, but the fuel cost savings attributable to such a material could be included only if a cost effectiveness analysis were done. There is thus an incentive to do a cost effectiveness analysis on "general heat waste reduction" materials which have associated high costs.

The discount rate would be the rate annually provided by DOE (calculated pursuant to the above-described method used for the life cycle cost methodology), but a State would have the discretion to select a higher discount rate if it had reason to conclude that the time value of the public funds used by the program is higher. DOE would notify the grantees of the revised discount rate annually and would provide a look-up table so that the factors by which fuel cost savings would be multiplied can be identified easily. If the resulting savings to investment ratio is greater than or equal to one, that result necessarily implies that the rate of return is positive.

DOE decided to propose the second approach rather than the first because the first approach involves much more calculational complexity without compensating benefits. The cash flows, other than energy costs and investment costs, taken into account by the life cycle cost methodology are largely irrelevant to WAP. (WAP does not fund replacement costs; most program participants lack the resources for any operation and maintenance; and salvage value in most cases will be negligible.) Furthermore, the arithmetic involved in calculating a rate of return is much more complicated than calculating a savings to investment ratio with which program auditors are basically familiar. The life cycle cost methodology provides that a rate of return:

> "* * * is calculated by subtracting 1 from the Nth root of the ratio of the terminal value of savings to the present value of costs, where N is the number of years in the study period. The numerator of the ratio is calculated by using the discount rate to compound forward to the end of the study period the yearly net savings in energy and non-fuel operation and maintenance costs attributable to the proposed energy conservation measure. The denominator of the ratio is the present value of the net increase in investment and replacement costs less salvage value attributable to the proposed energy conservation measure." 10 CFR 436.22.

The burden of making such a calculation is eased if one has the use of a personal computer and the NIST software described above. Use of such computers is not widespread among auditors, and DOE is reluctant to adopt regulatory provisions which would necessitate their use to carry out audits of simple buildings on which relatively limited amounts of funds can be expended. The second approach is compatible with the statutory language and could be more easily implemented. It is, therefore, the preferred alternative at this time.

The statutory amendments providing for the waiver from the 40 percent materials requirement address the shortcomings of the existing simple savings-to-investment ratio which are discussed above. They do not provide a complete solution because there may be a significant number of States who, as is currently the case, see no reason to adopt more rigorous cost effectiveness criteria. Given the limited availability of appropriations and the waning stream of petroleum violation escrow funds, DOE thinks that it is important to propose modification of the simple savings-to-investment ratio currently in § 440.21 to promote more effective use of available funds. The modification would take effect in program year 1993 so that States and community action agencies have significant time to alter their procedures.

In essence, DOE is proposing that, effective with program year 1993, all audit procedures, including those in Project Retro-Tech, would have to provide for: (1) Discounting estimated total fuel cost savings over the lifetime of a weatherization material to present value (as described above for 40 percent materials waiver); (2) inclusion of all related costs, including related incidental repair costs, in the calculation of the savings-to-investment ratio, and (3) cost-effectiveness testing for general heat waste reduction materials in excess of a cost level in the State plan.

The principle differences between the 1993 revised audit procedures and the audit procedures under the 40 percent materials waiver are that the 1993 procedures permit use of cost data from typical dwellings rather than site-specific data and they do not require use of blower door testing. There would be some additional calculation, but the arithmetic is relatively simple. DOE recognizes that any changes will be uncomfortable to implement, but the compensation for temporary difficulties will be a more effective use of the limited resources available to carry out the program.

Section 440.22 Eligible Dwelling Units

DOE proposes to amend § 440.22(a)(2) to include the phrase "at any time" when referring to the period of time during the twelve-month period preceding the determination of eligibility. This proposed clarification will permit States to qualify potential applicants who received cash assistance payments during the twelve-month period preceding the determination of eligibility but may not have received these cash assistance payments for the full twelve-month period.

Section 413(b) of the Act allows States to require financial participation from owners of multifamily buildings as a condition of having weatherization assistance provided with DOE funds. In implementing the provisions of proposed § 440.22(b)(3)(vi), States must remain aware that, while they may want to assign service priorities among multifamily buildings based on financial participation, they must be careful not to bar low-income tenants living in buildings from receiving assistance where the owner may legitimately not be able to afford to make financial contributions for energy conservation improvements.

DOE also proposes to include clarifying language in § 440.22(b)(3)(vi) which provides that such financial contributions as may be made by the landlord are not "program income" as that term is used in DOE's Assistance Regulations, 10 CFR 600.113. Such a contribution is not "program income" because it is not income derived from activities supported by a grant or subgrant. DOE expects that such financial contributions made by the landlord will be expended only in accordance with the agreement between the landlord and the weatherization agency. This is important because in most instances, landlords make contributions that are intended for use on their property for specific types of energy conservation improvements.

DOE proposes to add § 440.22(b)(3)(i)–(iv) which require States as a part of their State plan to establish procedures to address the weatherization of rental units. As required by the Amending Act, these procedures must ensure that: (1) The benefits of weatherization will accrue primarily to the tenants, even if the tenants pay for their energy use through their rent; (2) for a reasonable period of time, occupants of these dwellings will not be subject to rent increases unless those increases are demonstrably related to matters other than the weatherization work performed; (3) tenants may file complaints, and owners, in response to such complaints, may demonstrate that rent increases are justified; and (4) in order to secure the Federal investment and address eviction and sale of property receiving assistance under this program, States may seek landlord agreements to place liens or other contractual restrictions. In establishing these procedures, the State should adopt a comprehensive approach to weatherizing rentals. A key component of this approach is to develop procedures that strengthen the landlord-tenant agreements that the subgrantees will use. These agreements should contain language which is explicit in detailing the above provisions.

The Act requires DOE to provide non-binding guidance to States regarding dispute resolution procedures for tenant complaints against rent increases and evictions allegedly related to landlord efforts to appropriate for themselves the benefits of weatherization. In proposed paragraph (c) of § 440.22, DOE is suggesting that States rely on alternative dispute resolution procedures such as arbitration. DOE invites the public to comment on additional guidance which might be appropriate for the final rule.

DOE also proposes to add § 440.22(d) permitting States to weatherize shelters. The lack of a uniform definition and interpretation among States on whether shelters can or cannot be weatherized has led to uncertainty in this area. This proposal makes it clear that a State can weatherize a shelter which meets the definition stated in § 440.3. For the purpose of determining how many dwelling units exist in a shelter, DOE is proposing to define the minimum size for each dwelling unit within the shelter as 800 square feet of living space that may be counted as a dwelling unit, or each floor of the shelter may be counted as a dwelling unit. Recent evaluation studies have concluded that 800 square feet is the average size dwelling unit weatherized by the program; therefore, DOE is proposing to use 800 square feet as the minimum.

Section 440.24 Recordkeeping

The Act requires DOE as a part of its annual report on weatherization to include information and data furnished by each State. Therefore, DOE amends § 440.24 to include data on the average costs incurred in weatherization of individual dwelling units, the average size of the dwellings being weatherized, and the average income of households receiving assistance. DOE will use available data and supplemental surveys as needed to respond to the Congress; therefore, no additional reporting requirements will be imposed on the States.

Section 440.26 Incentive Fund

DOE has reserved § 440.26 to describe the Incentive Fund, authorized by section 415 of the Amending Act, and the manner in which it will operate. Subject to availability of appropriations and at DOE's discretion, the fund may be divided into two parts. The State Incentive Fund permits DOE to allocate appropriated funds to provide supplementary financial assistance to those States which DOE determines have achieved the best performance in the previous fiscal year. In making this determination, DOE would be required to (1) consult with the State Energy Advisory Board and (2) give priority to those States which, during the previous fiscal year, obtained a significant amount of income from non-Federal sources for their weatherization programs or increased significantly the portion of low-income weatherization assistance obtained from non-Federal sources.

The Local Agency Incentive Fund allows DOE to allocate from appropriated funds among the States an equal amount for each State not to exceed $100,000 per State. Each State would then make available amounts received under this incentive program to local agencies that have achieved the best performance during the previous fiscal year. None of the funds made available under the local fund could be used for administrative purposes. After consulting with the State Energy Advisory Board, DOE will prescribe guidelines to be used by each State in making available supplementary financial assistance under this program with a priority being given to local agencies that, by law or through administrative or executive action, provided non-Federal resources (including private resources) to supplement Federal financial assistance during the previous fiscal year. The guidelines to be developed will apply only to the local fund. These will not apply to the State fund.

Because of the nature and interest surrounding the provision of an Incentive Fund, DOE will issue a separate rulemaking to address this amendment. In order to develop criteria and procedures to implement the Incentive Fund, DOE is encouraging States, local agencies, and others to provide written comments at this time for its consideration. Initial discussions on the Incentive Fund have identified several areas which should be considered. In addition to comments in general, relative to the Incentive Fund, DOE would like specific comments on the following areas.

One criterion DOE considers important is the type and source of funds to be eligible in determining best performance. The question of types, for example, would include cash and in-kind contributions and whether they and/or others should be included. There are various sources of resources available to State and local agencies for weatherization in addition to DOE funds such as petroleum violation escrow funds, State funds, utility funds, and

other Federal funds. Should these sources be limited? If so, which ones?

Other considerations may include: Defining the relevant reporting period to be used for assessing best performance, either fiscal year or program year; defining what factors will be used to determine best performance; determining what entities should be eligible to compete in each fund; deciding what documentation competing entities will have to submit; developing an appeals process for entities not selected; and determining a process for awarding funds to qualified entities participating in the program. DOE is also interested in determining what other considerations might be included in developing criteria for this program. Implementation of this fund is not authorized to begin until FY 1992, and then only if Congress makes a separate appropriation to fund this activity.

Sections 400.26, 440.27, 440.28, 440.29 Performance Fund

Section 415(d) has been repealed, thereby eliminating the Performance Fund requirement for the weatherization program. Therefore, §§ 440.26, 440.27, 440.28 and 440.29, as they refer to the Performance Fund, are proposed for elimination from 10 CFR part 440.

Section 440.30 Administrative Review

DOE proposes to add the words "or § 440.13" after the words "§ 440.12" in paragraphs (a) and (d) of this section. This change will facilitate the reference for any appeals described in § 440.13.

Appendix A Standards for Weatherization Materials

Based on criteria provided by the National Institute of Standards and Technology, DOE is proposing to amend appendix A to update the standards for weatherization materials which are approved by DOE at the time of publication and to include new standards for the additional cooling measures proposed as a result of the amendments to the Act. The current standards were amended by DOE and made available to the States in September 1988. Since that time, standards have changed for many materials. States should be aware that the standards published in today's rule may be superseded in the future by the many entities which develop and set standards. DOE will make every effort to keep States informed as these changes take place.

III. Opportunity for Public Comment

A. Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the matters set forth in this notice to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets, CE–90, Forrestal Building, room 6B–025, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3012.

Comments (6 copies) should be identified on the outside of the envelope and on the documents themselves with the designation: "Weatherization Assistance Program for Low-Income Persons, Notice of Proposed Rulemaking, Docket Number CE–RM–91–110." Six copies should be submitted. In the event any person wishing to submit a written comment cannot provide six copies, alternative arrangements can be made in advance with the Hearings and Dockets Office.

All comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the DOE Freedom of Information Office Reading Room, room 1E–090, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure, should submit one complete copy as well as two copies from which the information claimed to be confidential has been deleted. DOE shall make a determination on any such claim. This procedure is set forth in 10 CFR 1004.11 (53 FR 15661, May 3, 1988).

B. Public Hearing Procedures

DOE will hold four public hearings on this proposed rule. The hearings will be held on the dates and at the locations indicated at the beginning of this notice.

Any person who has an interest in the proposed regulation or who is a representative of a group or class of persons which has an interest in it may request an opportunity to make an oral presentation. A request to speak at a hearing should be addressed to the Hearings and Dockets Office at the address or phone number indicated at the beginning of this notice.

The person making the request should briefly describe his or her interest in the proceedings and, if appropriate, state why that person is a proper representative of a group. The person should also provide a phone number where he or she may be reached during the day. Persons selected to be heard at a public hearing will be notified. They should bring six copies of their statement to the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made in advance with the Hearings and Dockets Office by so indicating in the letter or phone call requesting an opportunity to make an oral presentation.

DOE reserves the right to select persons to be heard at the hearings, to schedule their presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation will be limited to ten minutes, or based on the number of persons requesting to speak.

A DOE official will preside at the hearing. This will not be a judicial or evidentiary-type hearing. It will be conducted in accordance with 5 U.S.C. 553 and 501 of the DOE Organization Act, 42 U.S.C. 7191.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made by DOE and made available as part of the administrative record for this rulemaking. It will be on file for inspection at the DOE Freedom of Information Office Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the hearing reporter.

If DOE must cancel a hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register.** Notice of cancellation will also be given to all persons scheduled to speak at the hearing. Hearing dates may be canceled in the event no public testimony has been scheduled in advance.

IV. Review Under Executive Order 12291

Today's regulatory amendments were reviewed under Executive Order 12291. DOE has concluded that the rule is not a "major rule" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or (3) significant adverse effects on competition, employment, investment,

productivity, innovation, or on the ability of the U.S.-based enterprises to compete in domestic export markets. In accordance with the requirements of the Executive Order, this notice has been reviewed by the Office of Management and Budget.

V. Review Under Executive Order 12612

Executive Order 12612 requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires preparation of a federalism assessment to be used in decisions by senior policy-makers in promulgating or implementing the regulation.

Today's regulatory amendments will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Preparation of a federalism assessment is therefore unnecessary.

VI. Review Under the Regulatory Flexibility Act

These regulations were reviewed under the Regulatory Flexibility Act, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses and small government jurisdictions. DOE has concluded that the rule will affect most of the States and local agencies operating weatherization programs. The impact of the amendments in this rule will provide even greater flexibility to State and local agencies to develop and operate their respective programs. Therefore, DOE certifies that there will not be a significant economic impact on a substantial number of small entities, and that preparation of a regulatory flexibility analysis is not warranted.

VII. Review Under the Paperwork Reduction Act

No new information collected or recordkeeping requirements are imposed on the public by today's rules. Accordingly, no OMB clearance is required under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., or implementing regulations at 5 CFR part 1320.

VIII. Review Under National Environmental Policy Act

DOE has concluded that promulgation of these rules would not represent a major Federal action having a significant impact on the human environment under the National Environmental Policy Act (42 U.S.C. 4321, et seq.), Council of Environmental Quality guidelines (40 CFR parts 1500–1508), and DOE environmental guidelines (10 CFR part 1021). Therefore, no environmental impact statement has been prepared.

IX. Other Federal Agencies

DOE has provided draft copies to the Department of Health and Human Services' Low-Income Home Energy Assistance Program and the Department of Agriculture's Farmer's Home Administration. No comments have been received. DOE has also provided a draft copy to the Administrator of the Environmental Protection Agency, pursuant to section 7 of the Federal Energy Administration Act, as amended, 15 U.S.C. 766. The Administrator has had no comment.

X. The Catalog of Federal Domestic Assistance

The *Catalog of Federal Domestic Assistance* number for the Weatherization Assistance Program for Low-Income Persons is 81.042.

List of Subjects in 10 CFR Part 440

Administrative practice and procedure, Aged, Energy conservation, Grant programs-energy, Grant programs-housing and community development, Handicapped, Housing standards, Indians, reporting and recordkeeping requirements, and Weatherization.

In consideration of the foregoing, DOE hereby proposes to amend chapter II of title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, DC, September 25, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

10 CFR part 440 is amended as follows:

PART 440—WEATHERIZATION ASSISTANCE PROGRAM FOR LOW-INCOME PERSONS

1. The authority citation for part 440 is revised to read as follows:

Authority: 42 U.S.C. 6851 et seq.; 42 U.S.C. 7101 et seq.

2. Section 440.1 is revised to read as follows:

§ 440.1 Purpose and scope.

This part contains the regulations adopted by the Department of Energy to carry out a program of weatherization assistance for low-income persons established by the Energy Conservation in Existing Buildings Act of 1976, 42 U.S.C. 6851, et seq., enacted as title IV part A of the Energy Conservation and Production Act, Public Law 94–385, 90 Stat. 1150 et seq., and amended by title II, part 2 of the National Energy Conservation Policy Act, Public Law 95–619, 92 Stat. 3206 et seq., and by the Energy Security Act, Public Law 96–294, 94 Stat. 611 et seq., and by the State Energy Efficiency Programs Improvement Act, Public Law 101–440.

3. In § 440.3, remove the definition for "Operations Office Manager"; the definitions for "Separate Living Quarters" and "Weatherization Materials" are revised and add the following definitions in alphabetical order to read as follows:

§ 440.3 Definitions.

Children means dependents under the age of 18, or if the State elects, age 18 who are full-time students in a secondary school or equivalent technical or vocational training, and who may reasonably be expected to complete the program before reaching the age of 19.

Separate Living Quarters means living quarters in which the occupants do not live and eat with other persons in the structure and which have either:

(1) Direct access from the outside of the building or through a common hall or

(2) Complete kitchen facilities for the exclusive use of the occupants. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements, and includes shelters for homeless persons.

Shelter means a dwelling unit or units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another, and who are not living in nursing homes, prisons, or similar institutional care facilities.

Support Office Director means the Director of the DOE Field Support Office with the responsibility for grant administration or any official to whom that function may be redelegated.

Weatherization Materials mean:

(1) Caulking and weatherstripping of doors and windows;

(2) Furnace efficiency modifications, including, but not limited to—

(i) Replacement burners, furnaces, or boilers or any combination thereof;

(ii) Devices for minimizing energy loss through heating system, chimney, or venting devices; and

(iii) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(3) Cooling efficiency modifications, including, but not limited to—

(i) Replacement air conditioners;
(ii) Ventilation equipment;
(iii) Screening and window films; and
(iv) Shading devices;

4. Section 440.12 is amended by revising paragraph (b) to read as follows:

§ 440.12 State application.

* * * * *

(b) Each application shall include:

(1) The name and address of the State agency or office responsible for administering the program;

(2) A copy of the final State plan prepared after notice and a public hearing in accordance with § 440.14(a), except that an application by a local applicant need not include a copy of the final State plan;

(3) The budget for total funds applied for under the Act, which shall include a justification and explanation of any amounts requested for expenditure pursuant to § 440.18(d) for State administration;

(4) The total number of dwelling units proposed to be weatherized with grant funds during the budget period for which assistance is to be awarded, with financial assistance previously obligated under this part, and with the tentative allocation to the State;

(5) A recommendation that a tribal organization be treated as a local applicant eligible to submit an application pursuant to § 440.13(b), if such recommendation is to be made;

(6) A monitoring plan which shall indicate the method used by the State to insure the quality of work and adequate financial management control at the subgrantee level;

(7) A training and technical assistance plan which shall indicate how funds for training and technical assistance will be used; and

(8) A rental unit plan which shall describe the State procedures for implementing the provisions of 440.22(b)(3).

(9) Any further information which the Secretary finds necessary to determine whether an application meets the requirements of this part.

* * * * *

5. In § 440.13, paragraphs (a)(2) and (c) are revised and paragraphs (d), (e), and (f) are added as follows:

§ 440.13 Local applications.

(a) * * *

(2) The Support Office Director finally disapproves the application of a State, and, under § 440.30, either no appeal is filed or the Support Office Director's decision is affirmed.

* * * * *

(c) In the event one or more local applicants submits an application for financial assistance to carry out projects in the same geographical area, the Support Office Director shall hold a public hearing with the same procedures that apply under § 440.14(a).

(d) Based on the information provided by a local applicant and developed in any hearing held under paragraph (c) of this section, the Support Office Director shall determine in writing whether to award a grant to carry out one or more weatherization projects.

(e) If there is an adverse decision in whole or in part under paragraph (d) of this section, that decision is subject to administrative review under § 440.30 of this part.

(f) If, after a State application has been finally disapproved by DOE and the Support Office Director approves local applications under this section, the Support Office Director may reject that amended application in whole or in part as disruptive and untimely without prejudice to submission of an application for the next program year.

6. Section 440.14 is revised to read as follows:

§ 440.14 State plans.

(a) Before submitting an application, a State shall give not less than 10 days notice of hearing, reasonably calculated to inform prospective subgrantees, and shall conduct one or more public hearings for the purpose of receiving comments on a proposed State plan. The proposed State plan shall identify and describe proposed weatherization projects, including a statement of proposed subgrantees and the amount each will receive; shall address the other items contained in paragraph (b) of this section; and shall be made available throughout the State prior to the hearing. The notice for the hearing shall specify that copies of the plan are available and how they may be obtained. A court transcript of the hearings shall be prepared and written submission of views and data shall be accepted for the record.

(b) Subsequent to the hearing, the State shall prepare a final State plan which shall identify and describe:

(1) The production schedule for the State which shall indicate projected expenditures and the number of dwelling units which are expected to be weatherized each quarter during the program year;

(2) An estimate of the number of dwelling units expected to be weatherized during the program year by category to include:

(i) Single family and multi-family residences;

(ii) Elderly persons residences;

(iii) Handicapped persons residences;

(iv) Renters residences; and

(v) If Native Americans do not receive direct grants under § 440.11, Native American residences.

(3) The climatic conditions within the State;

(4) The type of weatherization work to be done;

(5) An estimate of the amount of energy to be conserved;

(6) An estimate of the number of eligible dwelling units in which the elderly reside;

(7) An estimate of the number of eligible dwelling units in which the handicapped reside;

(8) Each area to be served by a weatherization project within the State, and shall include for each area:

(i) The tentative allocation;

(ii) The number of dwelling units expected to be weatherized during the program year;

(iii) The estimated number of rental dwelling units to be weatherized; and

(iv) Sources of labor.

(9) The manner in which the State plan is to be implemented, and shall include:

(i) An analysis of the existence and effectiveness of any weatherization project being carried out by a subgrantee;

(ii) An explanation of the method used to select each area to be served by a weatherization project;

(iii) The extent to which priority will be given to the weatherization of single-family or other high energy consuming dwelling units;

(iv) The amount of non-Federal resources to be applied to the program;

(v) The amount of Federal resources, other than DOE weatherization grant funds, to be applied to the program;

(vi) The amount of weatherization grant funds tentatively allocated to the State under this part;

(vii) The expected average cost per dwelling to be weatherized, taking into account the total number of dwellings to be weatherized and the total amount of funds, Federal and non-Federal, expected to be applied to the program;

(viii) The average amount of the DOE funds specified in § 440.18(b)(1)–(11) to be applied to any dwelling unit;

(ix) The average amount of DOE funds to be applied to any dwelling unit for weatherization materials as specified in § 440.18(d)(1);

(x) The procedures used by the State for providing additional administrative funds to qualified subgrantees as specified in § 440.18(d).

(xi) Procedures for determining the most cost-effective measures in a dwelling unit or a statement that Project Retro-Tech will be used;

(xii) The definition of "low-income" for use statewide in accordance with § 440.22 which the State has chosen for determining eligibility.

(xiii) The amount of Federal funds and how they will be used to increase the amount of weatherization assistance that the State obtains from non-Federal sources, including private sources, and the expected leveraging effect to be accomplished.

7. Section 440.15 is amended by revising paragraphs (b), (d), and by adding paragraph (e) as follows:

§ 440.15 Subgrantees.

* * * * *

(b) The grantee shall ensure that the funds received under this part will be allocated to the entities selected in accordance with paragraph (a) of this section, such that funds will be allocated to all areas of the State on the basis of the relative need for a weatherization project by low-income persons.

* * * * *

(d) Any new or additional subgrantee shall be selected at a hearing in accordance with § 440.14(a) and upon the basis of the criteria in paragraph (a) of this section.

(e) A State may terminate or discontinue financial assistance during a program year to a subgrantee only in accordance with the policies and procedures applicable under paragraph (a) of this section.

8. Section 440.16 is revised to read as follows:

§ 440.16 Minimum program requirements.

Prior to the expenditure of any grant funds each grantee shall develop, publish, and implement procedures to ensure that:

(a) No dwelling unit may be weatherized without documentation that the dwelling unit is an eligible dwelling unit as provided in § 440.22;

(b) Priority is given to identifying and providing weatherization assistance to elderly and handicapped low-income persons, and such priority as the applicant determines is appropriate is given to dwelling units containing children and to single-family or other high-energy-consuming dwelling units;

(c) Financial assistance provided under this part will be used to supplement, and not supplant, State or local funds, and, to the maximum extent practicable as determined by DOE, to increase the amounts of these funds that would be made available in the absence of Federal funds provided under this part;

(d) To the maximum extent practicable, the grantee will secure the services of volunteers when such personnel are generally available, training participants and public service employment workers, pursuant to JTPA, to work under the supervision of qualified supervisors and foremen;

(e) To the maximum extent practicable, the use of weatherization assistance shall be coordinated with other Federal, State, local, or privately funded programs in order to improve energy efficiency and to conserve energy;

(f) The low-income members of an Indian tribe shall receive benefits equivalent to the assistance provided to other low-income persons within a State unless the grantee has made the recommendation provided in § 440.12(b)(5);

(g) No dwelling unit may be reported to DOE as completed until all weatherization materials have been installed and the subgrantee, or its authorized representative, has performed a final inspection and certified that the work has been completed in a workmanlike manner and in accordance with the priority determined by the audit procedures required by § 440.21(b); and

(h) Procedures developed by the State will ensure that subgrantees address health and safety issues related to weatherization.

§ 440.17 [Amended]

9. Section 440.17 is amended by removing from paragraph (a) the words "Operations Office Manager" and adding in their place the words "Support Office Director."

10. Section 440.18 is revised to read as follows:

§ 440.18 Allowable expenditures.

(a) An average of at least forty percent of the funds provided in a State under this part for weatherization materials, labor and related matters included in paragraphs (c) (1) through (9) of this section shall be spent for weatherization materials, except if DOE approves a State's application to waive the forty percent requirement under § 440.21(g).

(b) The expenditure of financial assistance provided under this part for labor, weatherization materials, and related matters included in paragraphs (c) (1) through (9) of this section shall not exceed an average of $1,600 per dwelling unit weatherized in the State, except as adjusted as follows:

(1) The $1600 average will be adjusted annually by DOE beginning in calendar year 1991 by increasing the limitation by an amount equal to:

(i) The limitation amount for the previous year, multiplied by:

(ii) The lesser of:

(A) The percentage increase in the Consumer Price Index (all items, United States city average) for the most recent calendar year completed before the beginning of the fiscal year for which the determination is being made, or

(B) Three percent.

(2) In addition to the average per dwelling unit limitation applicable in a State under paragraph (b)(1) of this section, DOE shall, upon application by a State, establish a separate average per dwelling unit limitation for dwelling units in such States which conform to program requirements and, in addition to any other weatherization modifications, have capital intensive furnace or cooling efficiency modifications as defined in 440.3 made under this part. The average per dwelling unit limitation applicable in a State which meet these requirements shall not exceed an amount equal to:

(i) The amount permitted for the expenditure of financial assistance for labor, weatherization materials, and related matters for dwelling units in such State in paragraph (c) (1) through (9) of this section plus;

(ii) An amount determined by the State to be the average amount that is appropriate for furnace or cooling efficiency modifications of dwelling units of the type assisted under this part in such State and approved by DOE.

(c) Allowable expenditures under this part include only:

(1) The cost of purchase and delivery of weatherization materials;

(2) Labor costs, in accordance with § 440.19;

(3) Transportation of weatherization materials, tools, equipment, and work crews to a storage site and to the site of weatherization work;

(4) Maintenance, operation, and insurance of vehicles used to transport weatherization materials;

(5) Maintenance of tools and equipment;

(6) Purchase or annual lease of tools, equipment, and vehicles, except that any purchase of vehicles shall be referred to DOE for prior approval in every instance;

(7) Employment of on-site supervisory personnel;

(8) Storage of weatherization materials, tools, and equipment;

(9) The cost of incidental repairs if such repairs are necessary to make the

installation of weatherization materials effective;

(10) The cost of liability insurance of weatherization projects for personal injury and for property damage;

(11) The cost of carrying out low-cost/no-cost weatherization activities in accordance with § 440.20;

(12) The cost of weatherization program financial audits as required by § 440.23(d);

(13) Allowable administrative expenses under paragraph (f) of this section; and

(14) Funds used for leveraging activities in accordance with § 440.14(b)(9)(xiii).

(d) Not more than 10 percent of any grant made to a State may be used by the grantee and subgrantees for administrative purposes in carrying out duties under this part, except that not more than 5 percent may be used by the State for such purposes, but not less that 5 percent must be made available to subgrantees by States. A State may provide in its annual plan for recipients of grants of less than $350,000 to use up to an additional 5 percent of such grants for administration if the State has determined that such recipient requires such additional amount to implement effectively the administrative requirements established by the Secretary pursuant to this part.

(e) No grant funds awarded under this part shall be used for any of the following purposes:

(1) To weatherize a dwelling unit which is designated for acquisition or clearance by a Federal, State, or local program within twelve months from the date weatherization of the dwelling unit would be scheduled to be completed; or

(2) To install or otherwise provide weatherization materials for a dwelling unit weatherized previously with grant funds under paragraph (a) of this section, except:

(i) As provided under § 440.20;

(ii) If such dwelling unit has been damaged by fire, flood or act of God and repair of the damage to weatherization materials is not paid for by insurance; or

(iii) That dwelling units partially weatherized under this part or under other Federal programs during the period September 30, 1975, through September 30, 1981, may receive further financial assistance for weatherization under this part. Such homes may not be counted as completions for the purposes of § 440.18.

11. Section 440.21 is revised to read as follows:

§ 440.21 Standards and techniques for weatherization.

(a) Only weatherization materials which are listed in appendix A or which meet or exceed the standards prescribed in appendix A to this part shall be purchased with funds provided under this part, except that DOE may approve an unlisted material upon application from any State.

(b) The weatherization materials which shall be installed first are those which are determined to be most cost effective pursuant to applicable paragraphs of this section. In making such a determination, the energy audit shall—

(1) Take into account the number of heating and cooling degree days in the area in calculating cost of fuel saved per year;

(2) Estimate the lifetime of weatherization materials, the costs of such materials, and the costs of their installation consistent with generally accepted estimates in the relevant trade; and

(3) Otherwise use reasonable methods and assumptions.

(c) Before April 1, 1993, except as provided by paragraphs (d) through (g) of this section, the energy audit procedures may presume that the most cost effective weatherization materials for a dwelling unit are those used for curtailing air infiltration by general heat waste reduction, and otherwise shall determine the most cost-effective weatherization materials by audit procedures using the following formula—

(1) The cost of fuel saved per year by installing a weatherization material in a dwelling unit;

(2) Multiplied by the appropriate lifetime of the weatherization material; and

(3) Divided by the cost of the weatherization material and the cost of the installation of the weatherization material.

(d) The energy audit procedures used in Project Retro-Tech to determine the most cost-effective weatherization materials comply with paragraph (c) of this section. Except as provided in paragraphs (e) through (g) of this section, the grantee and subgrantee may use audit procedures more demanding than Project Retro-Tech or the requirements of paragraph (c) of this section to determine the most cost-effective weatherization materials, provided that these procedures are approved by DOE prior to their use.

(e) Effective April 1, 1993, except for weatherization materials for general heat waste reduction determined to be appropriate by use of a blower door test, or similar DOE-approved test, or to cost less than an amount determined by the State to be cost-effective in a typical dwelling unit and approved by DOE in the State plan, and except as provided by paragraph (g) of this section, the energy audit shall determine the most cost-effective weatherization materials using the following formula for each such material—

(1) Total fuel cost savings over the lifetime of the weatherization material discounted to present value in compliance with paragraph (h) of this section or in compliance with a higher discount rate selected by a State for State-wide use in its State plan; and

(2) Divided by all significant costs related to the procedures and installation of the weatherization material, including the costs allowed by § 440.18(c)(1)–(9).

(f) Project Retro-Tech, as revised, complies with the requirements of paragraph (e) of this section. Effective April 1, 1993, any alternative audit approved by DOE under paragraph (d) of this section must comply or be revised to comply with the requirements of paragraph (e) of this section. In applying the formula set forth in paragraph (e) of this section, cost energy use and other data from typical dwellings may be used.

(g) The forty percent requirement for weatherization materials under § 440.18(a) is subject to waiver by DOE upon application by a State if the State plan includes energy audit procedures which require site-specific cost data (rather than data from typical dwellings) and which—

(1) Include advanced diagnostic and assessment techniques which meet sound engineering principals, such as blower door testing for air infiltration or equivalent techniques;

(2) Except for those general heat waste reduction weatherization materials designated by the State, require identification of the cost-effective weatherization materials by—

(i) Calculating total fuel cost savings over the useful life of the material under paragraphs (b) (1) and (2) of this section;

(ii) Discounting the total fuel cost savings to present value in accordance with paragraph (h) of this section;

(iii) Determining the ratio of discounted total fuel cost savings to the cost of the weatherization material calculated under paragraph (b)(3) of this section; and

(iv) Eliminating any weatherization material with respect to which the ratio is less than one;

(3) Require assignment of priorities among the most cost-effective

weatherization materials by automatically assigning highest priority to general heat waste reduction weatherization materials excepted by a State from the requirement to calculate a ratio under paragraph (1) of this subsection and by rank ordering the other weatherization materials in descending order of their respective ratios of discounted total fuel cost savings to costs, as adjusted for interaction, if any, among weatherization materials; and

(4) Require that the total conservation investment in the dwelling unit, which includes all costs to be claimed as allowable under § 440.18(e)(1)–(9) of this part (including the cost of all general heat waste reduction materials), has a positive rate of return by ensuring that the ratio of the estimated total fuel cost savings for all weatherization materials, actually calculated under paragraph (g)(2) of this section, to the total conservation investment is greater than or equal to one.

(h) The discount rate to be used in calculating present values under this section shall be an appropriate real discount rate, identified by a State for Statewide use in its State plan, representing the State's estimate of the time value or opportunity cost of money less inflation, but that real discount rate must be equal to the real discount rate calculated under paragraph (i) of this section and provided by DOE annually or rounded off to the nearest whole percent.

(i) Subject to a ceiling of 10 percent and a floor of three percent, DOE shall calculate annually the real discount rate as a 12-month average of the composite yields of all outstanding U.S. Treasury bonds neither due nor callable in less than ten years, as most recently reported by the Federal Reserve Board, adjusted to exclude estimate increases in the general level of prices consistent with projections of inflation in the most recent Economic Report of the President's Council of Economic Advisers.

12. Section 440.22 is revised to read as follows:

§ 440.22 Eligible dwelling units.

(a) A dwelling unit shall be eligible for weatherization assistance under this part if it is occupied by a family unit:

(1) Whose income is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget;

(2) Which contains a member who has received cash assistance payments under title IV or XVI of the Social Security Act or applicable State or local law at any time during the twelve-month period preceding the determination of eligibility for weatherization assistance; or

(3) If the State elects, is eligible for assistance under the Low-Income Home Energy Assistance Act of 1981, provided that such basis is at least 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget.

(b) A subgrantee may weatherize a building containing rental dwelling units using financial assistance for dwelling units eligible for weatherization assistance under paragraph (a) of this section, where:

(1) The subgrantee has obtained the written permission of the owner or his agent;

(2) Not less than 66 percent (50 percent for duplexes and four-unit buildings) of the dwelling units in the building:

(i) Are eligible dwelling units, or

(ii) Will become eligible dwelling units within 180 days under a Federal, State or local government program for rehabilitating the building or making similar improvements to the building; and

(3) The grantee has established procedures approved by DOE in any case in which a dwelling consists of a rental unit or rental units to insure that:

(i) The benefits of weatherization assistance in connection with such rental units, including units where the tenants pay for their energy through their rent, will accrue primarily to the low-income tenants residing in such units;

(ii) For a reasonable period of time after weatherization work has been completed on a dwelling containing a unit occupied by an eligible household, the tenants in that unit (including households paying for their energy through their rent) will not be subjected to rent increases unless those increases are demonstrably related to matters other than the weatherization work performed;

(iii) The enforcement of paragraph (b)(3)(ii) of this section is provided through procedures established by the State after consideration of the guidance in paragraph (c) of this section, by which tenants may file complaints and owners, in response to such complaints, shall demonstrate that the rent increase concerned is related to matters other than the weatherization work performed;

(iv) In order to secure the Federal investment made under this part and address the issues of eviction from and sale of property receiving weatherization materials under this part, States may seek landlord agreement to placement of a lien or to other contractural restrictions;

(v) No undue or excessive enhancement shall occur to the value of the dwelling units.

(vi) As a condition of having assistance provided under this part with respect to multifamily buildings, a State may require financial participation from the owners of such buildings. Such financial participation shall not be reported as program income, nor will it be treated as if it were appropriated funds. The funds contributed by the landlord shall be expended in accordance with the agreement between the landlord and the weatherization agency.

(c) In devising procedures under paragraph (b)(3)(iii) of this section, States should consider requiring use of alternative dispute resolution procedures including arbitration.

(d) A State may weatherize shelters. For the purpose of determining how many dwelling units exist in a shelter, a grantee may count each 800 square feet of the shelter as a dwelling unit or it may count each floor of the shelter as a dwelling unit.

§ 440.23 [Amended]

13. In § 440.23(d), the words "OMB Circular A–102, Attachment P," are changed to read "10 CFR part 600".

14. Section 440.24 is revised to read as follows:

§ 440.24 Recordkeeping.

Each grantee or subgrantee receiving Federal financial assistance under this part shall keep such records as DOE shall require, including records which fully disclose the amount and disposition by each grantee and subgrantee of the funds received, the total cost of a weatherization project or the total expenditure to implement the State plan for which assistance was given or used, the source and amount of funds for such project or program not supplied by DOE, the average costs incurred in weatherization of individual dwelling units, the average size of the dwelling being weatherized, the average income of households receiving assistance under this part, and such other records as DOE deems necessary for an effective audit and performance evaluation. Such recordkeeping shall be in accordance with the DOE Financial Assistance Rule, 10 CFR part 600, and any further requirements of this regulation.

§ 440.30 [Amended]

15. In § 440. 30, add the words "or § 440.13" after the words "§ 440.12" in paragraphs (a) (both occurrences) and (d).

§§ 440.10, 440.11, 440.12, 440.13, 440.23, 440.30 [Amended]

16. In §§ 440.10, 440.11, 440.12, 440.13, 440.23, 440.30 the words "Operations Office Manager" are changed to read "Support Office Director" in § 440.10(e); § 440.11(a) introductory text, (b) (2 times), (c) introductory text, (d) (3 times), and (e) (2 times); § 440.12(a) (4 times), and (c) (2 times); § 440.13(a) introductory text and (b); § 440.23 (a) and (c); and § 440.30 (b), (d), (f), and (i).

17. Appendix A to part 440 is revised to read as follows:

Appendix A—Standards for Weatherization Materials

The following Government standards are produced by the Consumer Products Safety Commission and are published in chapter II, title 16, Code of Federal Regulations.

Thermal Insulating Materials for Building Elements Including Walls, Floors, Ceilings, Attics, and Roofs Insulation-organic fiber-conformance to Interim Safety Standard in 16 CFR part 1209.

Fire Safety Requirements for Thermal Insulating Materials According to Insulation Use-Attic Floor—insulation materials intended for exposed use in attic floors shall be capable of meeting the same flammability requirements given for cellulose insulation in 16 CFR part 1209.

Enclosed spaces-insulation materials intended for use within enclosed stud or joist spaces shall be capable of meeting the smoldering combustion requirements in 16 CFR part 1209.

More information regarding the standards in this reference can be obtained from the following sources:

Air Conditioning and Refrigeration Institute, 1501 Wilson Blvd., Arlington, VA 22209; (703) 524–8800.

American Gas Association, 1515 Wilson Blvd., Arlington, VA 22209; (703) 841–8400.

American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018; (212) 354–3300.

American Society of Heating, Refrigeration, and Air Conditioning Engineers, Inc., 1791 Tullie Circle, NE., Atlanta, GA 30329; (404) 636–8400.

American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017; (212) 705–7800.

American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103; (215) 299–5400.

American Architectural Manufacturers Association, 2700 River Road, Des Plaines, IL 60018; (708) 699–7310.

Environmental Protection Agency, 401 M Street, NW., Washington, DC 20006; (202) 554–1080.

Federal Specifications, General Services Administration, Specifications Section, Room 6654, 7th and D Streets, SW., Washington, DC 20407; (202) 708–5082.

Gas Appliance Manufacturers Association, 1901 Moore St., Arlington, VA 22209; (703) 525–9565.

National Electric Manufacturers Association, 2101 L Street, NW., Suite 300, Washington, DC 20037; (202) 457–8400.

National Fire Protection Association, Batterymarch Park, P.O. Box 9101, Quincy, MA 02269; (617) 770–3000.

National Institute of Standards and Technology, U.S. Department of Commerce, Gaithersburg, MD 20899, (301) 975–2000.

National Standards Association, 1200 Quince Orchard Blvd., Gaithersburg, MD 20878; (301) 590–2300. (NSA is a local contact for materials from ASTM)

National Wood Window and Door Association, 1400 East Touchy Avenue, Des Plaines, IL 60018; (708) 299–5200.

Sheet Metal and Air Conditioning Contractors Association, P.O. Box 221230, Chantilly, VA 22022–1230; (703) 803–2980.

Steel Door Institute, 712 Lakewood Center North, 14600 Detroit Avenue, Cleveland, OH 44107; (216) 899–0100.

Steel Window Institute, 1230 Keith Building, Cleveland, OH 44115; (216) 241–7333.

Tubular Exchanger Manufacturers Association, 25 North Broadway, Tarrytown, NY 10591; (914) 332–0040.

Underwriters Laboratories, Inc., P.O. Box 75530, Chicago, IL 60675–5330; (708) 272–8800.

Weatherization Assistance Programs Division, Conservation and Renewable Energy, Mail Stop 5G–023, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–2207

Thermal Insulating Materials for Building Elements Including Walls, Floors, Ceilings, Attics, and Roofs

	Standards for conformance
Insulation—Mineral Fiber:	
Blanket insulation	ASTM [1] C665–88.[4]
Roof insulation board	ASTM C726–88.[4]
Loose-fill insulation	ASTM C764–88.[4]
Insulation—Mineral Cellular:	
Vermiculite loose-fill insulation.	ASTM C516–80 (1990).[5]
Perlite loose-fill insulation	ASTM C549–81 (1986).
Cellular glass insulation block.	ASTM C552–88.[4]
Perlite insulation board	ASTM C728–89a.[4]
Insulation—Organic Fiber:	
Cellulosic fiber insulating board.	ASTM C208–72 (1982).
Cellulose loose-fill insulation.	ASTM C739–88.[3]
Insulation—Organic Cellular:	
Preformed block-type polystyrene insulation.	ASTM C578–87a.
Rigid preformed polyurethane insulation board.	ASTM C591–85.
Polyurethane or polyisocyanurate insulation board faced with aluminum foil on both sides.	FS [2] HH–I–1972/1 (1981).
Polyurethane or polyisocyanurate insulation board faced with felt on both sides.	FS HH–I–1972/2 (1981).

Thermal Insulating Materials for Building Elements Including Walls, Floors, Ceilings, Attics, and Roofs—Continued

	Standards for conformance
Insulation—Composite Boards:	
Mineral fiber and rigid cellular polyurethane composite roof insulation board.	ASTM C726–88.[4]
Perlite board and rigid cellular polyurethane composite roof insulation.	ASTM C984–83.
Gypsum board and polyurethane or polisocyanurate composite board.	FS HH–I–1972/4 (1981).
Materials used as a patch to reduce infiltration through the building envelope.	Commercially available.

[1] ASTM indicates American Society for Testing and Materials.
[2] FS indicates Federal Specifications.
[3] This standard has replaced Interim Safety Standard 16 CFR part 1209.
[4] Denotes a revised standard.
[5] Denotes a re-approved existing standard.

Thermal Insulating Materials for Pipes, Ducts, and Equipment Such as Boilers and Furnaces

	Standards for Conformance
Insulation—Mineral Fiber:	
Preformed pipe insulation	ASTM [1] C547–77.
Blanket and felt insulation (industrial type).	ASTM C553–70 (1977).
Blanket insulation and blanket type pipe insulation (metal-mesh covered) (industrial type).	ASTM C592–80.
Block and board insulation	ASTM C612–83.
Spray applied fibrous insulation for elevated temperature.	ASTM C720–89.[2]
High-temperature fiber blanket insulation.	ASTM C892–89.[2]
Duct work insulation	Selected and applied according to ASTM C971–82.
Insulation—Mineral Cellular:	
Calcium silicate block and pipe insulation.	ASTM C533–85 (1990).[3]
Cellular glass insulation	ASTM C552–88.[2]
Expanded perlite block and pipe insulation.	ASTM C610–85.
Insulation—Organic Cellular:	
Preformed flexible elastomeric cellular insulation in sheet and tubular form.	ASTM C534–88.[2]
Unfaced preformed rigid cellular polyurethane insulation.	ASTM C591–85.
Insulation Skirting	Commercially available.

[1] ASTM indicates American Society for Testing and Materials.
[2] Denotes a revised standard.
[3] Denotes a re-approved existing standard.

Fire Safety Requirements for Insulating Materials According to Insulation Use

	Standards for conformance
Attic floor: intended for exposed use.	Insulation materials in attic floors shall be capable of meeting the same smoldering combustion requirements given for cellulose insulation in ASTM [1] C739-88.[2]
Enclosed space: intended for use within spaces shall be capable of.	Insulation materials enclosed stud or joist meeting the smoldering combustion requirements in ASTM C739-88.[2]
Exposed Interior Walls and Ceilings: including those with.	Insulation materials, combustible facings, which remain exposed and serve as wall or ceiling interior finish, shall have a flame spread classification not to exceed 150 (per ASTM E84-89a).[3]
Exterior Envelope Walls and Roofs.	Exterior envelope walls and roofs containing thermal insulations shall meet applicable local government building code requirements for the complete wall or roof assembly.
Pipes, Ducts, and Equipment: intended for use on pipes, flame spread classification.	Insulation materials ducts and equipment shall be capable of meeting a not to exceed 150 (per ASTM E84-89a).[3]

[1] ASTM indicates American Society for Testing and Materials.
[2] This standard replaces Interim Safety Standard 16 CFR part 1209.
[3] Denotes a revised standard.

Storm Windows

	Standards for conformance
Storm windows:	
Aluminum combination storm windows.	ANSI/AAMA [1] 1002.10-83.
Aluminum frame storm windows.	ANSI/AAMA 1002.10-83.
Wood frame storm windows.	ANSI/NWWDA [2] IS 2-87.[4] (Section 3)
Rigid vinyl frame storm windows.	ASTM [3] D4099-89.[4]
Frameless plastic glazing storm windows.	Required minimum thickness is 6 mil (.006 inches).
Movable insulation systems for windows.	Commercially available.

[1] ANSI/AAMA indicates American National Standards Institute/American Architectural Manufacturers Association.
[2] ANSI/NWWDA indicates American National Standards Institute/National Wood Window & Door Association.
[3] ASTM indicates American Society for Testing and Materials.
[4] Denotes a revised standard.

Storm Doors

	Standards for conformance
Storm doors:	
Aluminum:	
Storm Doors	ANSI/AAMA [1] 1102.7-89.[4]
Sliding glass storm doors.	ANSI/AAMA 1002.10-83.
Wood storm doors	ANSI/NWWDA [2] IS 6-86.
Rigid vinyl storm doors.	ASTM [3] D3678-88.
Vestibules: Materials to construct vestibules.	Commercially available.

[1] ANSI/AAMA indicates American National Standards Institute/American Architectural Manufacturers Association.
[2] ANSI/NWWDA indicates American National Standards Institute/National Wood Window & Door Association.
[3] ASTM indicates American Society for Testing and Materials.
[4] Denotes a revised standard.

Replacement Windows

	Standards for conformance
Replacement windows:	
Aluminum frame windows.	ANSI/AAMA 101-88.[1]
Steel frame windows.	Steel Window Institute recommended specifications for steel windows.
Wood frame windows.	ANSI/NWWDA IS 2-87.[1]
Rigid vinyl frame windows.	ASTM D4099-89.[1]

[1] Denotes a revised standard.

Replacement Doors

	Standards for conformance
Replacement doors:	
Hinged doors:	
Steel doors	ANSI/SDI [1] 100-1985.
Wood doors:	
Flush doors	ANSI/NWWDA [2] IS 1-87. (exterior door provisions)
Pine, Fir, Hemlock and Spruce doors.	ANSI/NWWDA IS 6-86.
Sliding patio doors:	
Aluminum doors	ANSI/AAMA [3] 101-88.[4]
Wood doors	ANSI/NWWDA IS 3-83.

[1] ANSI/SDI indicates American National Standards Institute/Steel Door Institute.
[2] ANSI/NWWDA indicates American National Standards Institute/National Wood Window & Door Institute.
[3] ANSI/AAMA indicates American National Standards Institute/American Architectural Manufacturers Association.
[4] Denotes a revised standard.

Caulks and Sealants

	Standards for conformance
Caulks and Sealants:	
Putty	FS [1] TT-P-00791B.
Glazing compounds for metal sash.	ASTM [2] C669-75 (1989).[3]
Oil and resin base caulks	ASTM C570-72 (1989).[3]
Acrylic (solvent types) sealants.	FS TT-S-00230C.
Butyl rubber sealants	FS TT-S-001657.
Chlorosulfonated polyethylene sealants.	FS TT-S-00230C.
Latex sealing compounds	ASTM C834-76 (1986).
Elastomeric joint sealants (normally considered to include polysulfide, polyurethane, and silicone).	ASTM C920-87.[4]
Preformed gaskets and sealing materials.	ASTM C509-84.

[1] FS indicates Federal Specifications.
[2] ASTM indicates American Society for Testing and Materials.
[3] Denotes a re-approved standard.
[4] Denotes a revised standard.

Weatherstripping

	Standards for conformance
Weatherstripping	Commercially available.

Vapor Retarders

	Standards for conformance
Vapor retarders	Selected according to the provisions cited in ASTM [1] C755-85 (1990).[2] Permeance not greater than 1 perm when determined according to the desiccant method described in ASTM E96-90.[3]
Items to improve attic ventilation.	Commercially available.

[1] ASTM indicates American Society for Testing and Materials.
[2] Denotes a reapproved existing standard.
[3] Denotes a revised standard.

Clock Thermostats

	Standards for conformance
Clock thermostats	NEMA [1] DC 3-1989.[2]

[1] NEMA indicates a National Electric Manufacturers Association.
[2] Denotes a revised standard.

Heat Exchangers

	Standards for conformance
Heat exchangers, water-to-water and steam-to-water.	ASME [1] Pressure Code provisions, as applicable to pressure vessels. Standards of Tubular Exchanger Manufacturers Association (last edition with 1983 Addenda, TEMA).
Heat exchangers with gas-fired appliances [3].	Conformance to AGA [2] requirements for Heat Reclaimer Devices for use with Gas-Fired Appliances No. 1-80. AGA Laboratories Certification Seal.

[1] ASME indicates American Society of Mechanical Engineers.
[2] AGA indicates American Gas Association.

[3] The heat reclaimer is for installation in a section of the vent connector from appliances equipped with draft hoods or appliances equipped with powered burners or induced draft and not equipped with a draft hood.

Heat Pump Water Heaters

	Standards for conformance
Heat pump water heating heat recovery systems.	Electrical components to be listed by UL.[1]

[1] UL indicates Underwriters Laboratories.

Boiler/Furnace Control Systems

	Standards for conformance
Automatic set back thermostats.	Listed by UL.[1] Conformance to NEMA [2] DC 3-1989.[5]
Line voltage or low voltage room thermostats.	NEMA [2] DC 3-1989.[5]
Automatic gas ignition systems.	ANSI [3] Z21.21-1987. AGA [4] Laboratories Certification Seal.
Energy management systems.	Listed by UL.
Hydronic boiler controls.	Listed by UL.
Other burner controls...	Listed by UL.

[1] UL indicates Underwriters Laboratories.
[2] NEMA indicates National Electric Manufacturers Association.
[3] ANSI indicates American National Standards Institute.
[4] AGA indicates American Gas Association.
[5] Denotes a revised standard.

Water Heater Modifications

	Standards for conformance
Insulate tank and distribution piping.	(See insulation section).
Install heat traps on inlet and outlet piping.	Applicable local plumbing code.
Install/replace water heater heating elements.	Listed by UL.[1]
Electric, freeze-prevention tape for pipes.	Listed by UL.[1]
Reduce thermostat settings.	State or local recommendations.
Install stack damper, gas-fueled.	ANSI [2] Z21.66-1985, including Exhibits A & B, and ANSI Z223.1-1988.[4]
Install stack damper, oil-fueled.	UL 17 and NFPA [3] 31-1987.
Install water flow modifiers.	Commercially available.

[1] UL indicates Underwriters Laboratories.
[2] ANSI indicates American National Standards Institute.
[3] NFPA indicates National Fire Prevention Association.
[4] Denotes a revised standard.

Waste Heat Recovery Devices

	Standards for conformance
Desuperheater/water heaters.	ARI [1] 470-1987.
Condensing heat exchangers.	Commercially available components and in new heating furnace systems to manufacturers' specifications.
Condensing heat exchangers; (Commercial, multi-story building, institutional).	Commercially available with teflon-lined tubes to manufacturers' specifications.
Energy recovery equipment.	Energy recovery equipment and systems air-to-air (1978) Sheet Metal and Air Conditioning Contractors National Association (SMACNA [2]). ASHRAE [3] 84-78 outlines testing and rating of energy recovery equipment.

[1] ARI indicates Air Conditioning and Refrigeration Institute.
[2] SMACNA denotes Sheet Metal and Air Conditioning Contractors' National Association.
[3] ASHRAE indicates American Society of Heating, Refrigeration, and Air Conditioning Engineers, Inc.

Boiler Repair and Modifications/ Efficiency Improvements

	Standards for conformance
Install gas conversion burners (for gas or oil-fired systems).	ANSI [1] Z21.8-1984, ANSI Z21.17-1984 and ANSI Z223.1-1988.[6] AGA [2] Laboratories Certification seal.
Replace oil burner	UL [3] 296 and NFPA [4] 31-1987.
Install burners (oil/gas).	ANSI Z223.1-1988 for gas equipment and NFPA 31-1987 for oil equipment.
Re-adiust boiler water temperature or install automatic boiler temperature reset control..	ANSI/ASME [5] CSD-1-1988,[7] ANSI/ASME CSD-1A-1989,[7] ANSI Z223.1-1988, and NFPA 31-1987.
Replace/modify boilers.	ASME boiler and pressure vessel code (eleven sections), latest edition. Testing and rating per Hydronics Institute (HYDI).
Clean heat exchanger, adjust burner air shutter(s), check smoke no. on oil-fueled equipment. Check operation of pump(s) and replacement filters.	Per manufacturers' instructions.
Repair combustion chambers.	Refractory linings may be required for conversions.
Replace heat exchangers, tubes.	Protection from flame contact with conversion burners by refractory shield.
Install/replace thermostatic radiator valves.	Commercially available. One-pipe steam systems require air vents on each radiator; see manufacturers' requirements.
Install boiler duty cycle control system.	Commercially available. National Electric Code (NEC) and local electrical codes provisions for wiring.

[1] ANSI indicates American National Standards Institute.
[2] AGA indicates American Gas Association.
[3] UL indicates Underwriters Laboratories.
[4] NFPA indicates National Fire Prevention Association.
[5] ANSI/ASME indicates American National Standards Institute/American Society of Mechanical Engineers.
[6] Denotes a revised standard.
[7] Denotes a re-approved standard.

Heating and Cooling System Repairs and Tune-Ups/Efficiency Improvements

	Standards for conformance
Install duct insulation....	FS [1] HH-I-558B 1971 (see insulation sections).
Reduce input of burner; derate gas-fueled equipment.[5]	Local utility company procedures if applicable for gas-fueled furnaces and ANSI [2] Z223.1-1988 [6] (NFPA [3] 54-1988) appendix H.
Repair/replace oil-fired equipment.	NFPA 31-1987.
Replace combustion chamber in oil-fired furnaces or boilers.	NFPA 31-1987.
Clean heat exchanger and adjust burner; adjust air shutter and check CO_2 and stack temperature. Clean or replace air filter on forced air furnace.	ANSI Z223.1-1988 (NFPA 54-1988) [6] appendix H.
Install vent dampers for gas-fueled heating systems.	Applicable sections of ANSI Z223.1-1988 (NFPA 54-1988) [6] including appendices H, I, J, and K. ANSI Z21.66-1988 [6] and exhibits A & B for electrically operated dampers.
Install vent dampers for oil-fueled heating systems.	Applicable sections of NFPA 31-1987 for installation and in conformance with UL [4] 17.
Reduce excess combustion air:	
A. Reduce vent connector size of gas-fueled appliances.	ANSI Z223.1-1988 (NFPA 54-1988) part 9 and appendices G & H.[6]
B. Adjust barometric draft regulator for oil fuels.	NFPA 31-1987 and per manufacturers' (furnace or boiler) instructions.
Replace constant burning pilot with electric ignition device on gas-fueled furnaces or boilers.	ANSI Z21.71-1981.
Readjust fan switch on forced air gas or oil-fueled furnaces.	Applicable sections and appendix H of ANSI Z223.1-1988 (NFPA 54-1988) [6] for gas furnaces and NFPA 31-1987 for oil furnaces.
Replace burners.....	See power burners (oil/gas).
Install/replace duct furnaces (gas).	ANSI Z223.1-1988 (NFPA 54-1988) [6]
Install/replace heat pumps.	Listed by UL.
Replace air diffusers, intakes, registers, and grilles.	Commercially available.
Install/replace warm air heating metal ducts.	Commercially available.

Heating and Cooling System Repairs and Tune-Ups/Efficiency Improvements—Continued

	Standards for conformance
Filter Alarm Units	Commercially available.

[1] FS indicates Federal Specifications.
[2] ANSI indicates American National Standards Institute.
[3] NFPA indicates National Fire Prevention Association.
[4] UL indicates Underwriters Laboratories.
[5] This may be prohibited by local jurisdiction—it may also void the manufacturer's warranty. The National Fuel Gas Code does not specifically endorse this.
[6] Denotes a revised standard.

Replacement Furnaces, Boilers, and Wood Stoves

	Standards for conformance
Chimneys, fireplaces, vents and solid fuel burning appliances.	NFPA [1] 211–1988.
Gas-fired furnaces	ANSI [2] Z21.47–1987 and ANSI Z223.1–1988 (NFPA 54–1988).[6]
Oil-fired furnaces	UL [3] 727 [5] and NFPA 31–1987.
Liquefied petroleum gas storage.	NFPA 58–1989.[6]

[1] NFPA indicates National Fire Prevention Association.
[2] ANSI indicates American National Standards Institute.
[3] UL indicates Underwriters Laboratories.
[4] Denotes a revised standard.
[5] Denotes a standard that has been added since last publication.

Ventilation Fans

	Standards for conformance
Ventilation fans: including electric attic, ceiling, and whole house fans.	UL 507.

Air Conditioners and Cooling Equipment

	Standards for conformance
Air conditioners:	
Central air conditioners	ARI [1] 210/240–89.
Room-size units	ANSI/AHAM [2] RAC 1–1982.
Other cooling equipment: (including evaporative coolers, heat pumps and other equipment).	UL [3] 1995.[4]

[1] ARI indicates Air Conditioning and Refrigeration Institute.
[2] AHAM/ANSI indicates American Home Appliance Manufacturers/American National Standards Institute.
[3] UL indicates Underwriters Laboratories.
[4] This standard is a general standard covering many different types of heating and cooling equipment.

Screens, Window Films, and Reflective Materials

	Standards for conformance
Insect screens	Commercially available.
Window films	Commercially available.
Shade screens:	
Fiberglass shade screens.	Commercially available.
Polyester shade screens.	Commercially available.
Rigid awnings:	
Wood rigid awnings	Commercially available.
Metal rigid awnings	Commercially available.
Louver systems:	
Wood louver systems.	Commercially available.
Metal louver systems.	Commercially available.
Industrial-grade white paint used as a heat-reflective measure on awnings, window louvers, doors, and exterior duct work (exposed).	Commercially available.

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October 23, 1991

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing the Ouachita Rock-Pocketbook (Mussel) and the Razorback Sucker (Xyrauchen texanus); Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Final Rule To List the Ouachita Rock-Pocketbook (Mussel) as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the Ouachita rock-pocketbook (mussel) (*Arkansia* (—*Arcidens*) *wheeleri*), to be an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended. This species once inhabited the Kiamichi River in Oklahoma, the Little River in southwestern Arkansas, and the Ouachita River in central Arkansas. Presently, it is known to survive only in an 80-mile reach of the Kiamichi River upstream from Hugo Reservoir in Oklahoma and a 5-mile segment of the Little River in southwestern Arkansas. The species' range has been seriously reduced by the construction of reservoirs, water quality degradation, and other impacts to its habitat. Owing to the species' limited distribution, any factors that adversely modify habitat or water quality in these stream segments could further reduce the species and the habitat it occupies. This rule implements the protection and recovery provisions afforded by the Act for this mussel. Critical habitat is not being designated.

EFFECTIVE DATE: November 22, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Ecological Services Field Office, U.S. Fish and Wildlife Service, 222 South Houston, suite A, Tulsa, Oklahoma 74127.

FOR FURTHER INFORMATION CONTACT: David Martinez at the above address (918/581–7458 or FTS 745–7458).

SUPPLEMENTARY INFORMATION:

Background

The Ouachita rock-pocketbook, previously known as Wheeler's pearly mussel, was originally described as *Arkansia wheeleri* by Ortmann and Walker (1912), who established the monotypic genus *Arkansia* to contain *A. wheeleri*. The species was subsequently placed in the genus *Arcidens* by Clarke (1981). While it is undoubtedly related to the rock-pocketbook, *Arcidens confragosus*, the Service is following Turgeon *et al.* (1988) in retaining it in the monotypic genus *Arkansia* in this final rule. Turgeon *et al.* (1988) comprise a committee set up to standardize common and scientific names for molluscs. Their findings have been approved by the American Fisheries Society, the Council of Systematic Malacologists, and the American Malacological Union.

The Ouachita rock-pocketbook's shell is quadrate-ovate or subcircular, truncated posteriorly, subinflated, up to 110 millimeters (mm) (4.3 inches) long, 73 mm (2.9 inches) high, and 48 mm (1.9 inches) wide, moderately heavy, somewhat thickened anteriorly, up to 6 mm (0.24 inches) thick, and half as thick posteriorly. The umbos (beaks) are prominent. The periostracum is chestnut-brown to black with a silky luster. The shell has a well-defined lunule depression. There is heavy sculpturing only on the posterior half of the shell, and the beak sculpturing is barely perceptible. The shell has well-developed hinge teeth, of which the anterior left pseudocardinal and right pseudocardinal are both curved and parallel to the lunule; the posterior left pseudocardinal joins a strong, distinctive, interdental projection. The external membrane of the outer demibranch is openly porous, like a loosely-woven net. Little is known of the Ouachita rock-pocketbook's life history, and the glochidia are unknown (Branson 1983, Clarke 1981).

Ortmann and Walker (1912) designated the type locality as "Old River, Arkadelphia, Arkansas." Wheeler (1918) described the type locality as a series of oxbows connected to the Ouachita River, north of Arkadelphia, Clark County, Arkansas. Wheeler gave the Ouachita River as another locality inhabited by *A. wheeleri*, but stated it was rare in that area. Ortmann (1921) and Isely (1925) reported specimens being collected in the Kiamichi River, Pushmataha County, Oklahoma, near Antlers and Tuskahoma, respectively. Few other records were reported until recently.

Valentine and Stansbery (1971) reported the mussel from the Kiamichi River at Spencerville Crossing, Choctaw County, Oklahoma, a site since flooded by Hugo Reservoir. Johnson (1980) and Clarke (1981) added two additional localities by surveying museum specimens: Little River, White Cliffs, Little River County, Arkansas; and the Kiamichi River 1.9 kilometers (1.2 miles) south of Clayton, Pushmataha County, Oklahoma. Harris and Gordon (1987) found several empty shells on the Little River, 2.0 kilometers (1.25 miles) west of Arkansas Highway 41 and 6.4 kilometers (4.0 miles) northwest of the U.S. Highway 59 and 71 crossing of Millwood Reservoir, Little River County-Sevier County border, Arkansas. They also found relict shells on the Ouachita River near the mouth of Saline Bayou in Clark County and at Malvern, Hot Spring County, Arkansas. A single valve of this species was found in an archaeological site in Jackfork Valley, Pushmataha County, Oklahoma (Bogan and Bogan 1983).

Living populations have been found recently only in the Kiamichi River (estimated to be about 1,000 individuals) from the extreme southwestern corner of LeFlore County to Antlers, Pushmataha County, Oklahoma (Oklahoma Natural Heritage Inventory 1989); and in the Little River (less than 100 individuals) from the Oklahoma-Arkansas border 8 kilometers (5 miles) east along the border of Little River and Sevier Counties, Arkansas (Clarke 1987). In a survey of the Kiamichi River, Mehlhop-Cifelli and Miller (1989) documented the Ouachita rock-pocketbook in a 50-kilometer (30-mile) stretch of the river not previously known to be inhabited, for a total range in the Kiamichi River of 130 river-kilometers (80 river-miles). The Ouachita rock-pocketbook has occurred in very low densities at all documented sites.

Surveyors have recently examined other sites for mussels but found no *A. wheeleri* at any other locality. The species has apparently been eliminated from the Ouachita River, the lower Kiamichi River, and the lowermost Little River. Beyond the records discussed, it has not been found in other portions of the streams it inhabits, nor in any other streams or waters, including tributaries (Valentine and Stansbery 1971; Clarke 1987; Harris and Gordon 1987; Charles M. Mather, University of Science and Arts of Oklahoma, *in litt.*, 1990).

Little is known about the habitat requirements of the Ouachita rock-pocketbook. Historically, it has been found in muddy or rocky substrate, in stream-side channels and backwaters with little or no flow, and near riffles. Mehlhop-Cifelli and Miller (1989) found that backwater areas in the Kiamichi River were usually next to sand/gravel/cobble bars that either were scoured clean or supported emergent aquatic vegetation. They also found *A. wheeleri* in pools with rock substrate. Vaughnn (1991) found *A. wheeleri* to be more abundant in pools than in backwaters and to prefer a stable substratum containing a mixture of cobble and gravel. Backwaters inhabited by *A. wheeleri* had a substratum of gravel and

sand. She also reported that *A. wheeleri* always occurred within large mussel beds containing a diversity of mussel species.

Little is known about the life history of the species. However, the most closely related species, *Arcidens confragosus*, is a long-term breeder, becoming gravid in the fall and releasing glochidia (larvae) in the spring. The glochidia attach to the fins, tail, or scales of fish. The fish hosts of *Arcidens confragosus* include the American eel, gizzard shad, rock bass, white crappie, and freshwater drum (Clarke 1981).

Arkansia wheeleri (known then as Wheeler's pearly mussel) was included in a Service review of 61 species of snails, mussels, and crustaceans announced October 17, 1974 (39 FR 37078), to determine whether classification as endangered or threatened species might be appropriate. As a result of a status survey by Landye (1980) and other information reviewed by the Service, *A. wheeleri* was subsequently included in the May 22, 1984, Review of Invertebrate Wildlife for Listing as Endangered or Threatened Species (49 FR 21664) as a Category 2 species. Category 2 comprises taxa for which information indicates that proposing to list the taxa as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threats are not currently available to support proposed rules. Additional information on the species was obtained through a status survey by Clarke (1987) and other studies received by the Service (e.g., Harris and Gordon 1987). In the January 6, 1989, Animal Notice of Review (54 FR 554), *A. wheeleri* was moved to Category 1, which comprises taxa for which the Service currently has substantial information to support the biological appropriateness of proposing to list the taxa as endangered or threatened. Further information was obtained through a study of the Kiamichi River population (Mehlop-Cifelli and Miller 1989) and in response to pre-proposal letters of inquiry sent to interested parties on March 15, 1989. A proposed rule to list this species as endangered was published on July 23, 1990 (55 FR 29865).

Summary of Comments and Recommendations

In the July 23, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The comment period originally closed on September 21, 1990, but was reopened from November 14, 1990, to December 4, 1990 (55 FR 43390), to allow individuals to submit comments after the public hearing. Appropriate Federal agencies, State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the Daily Oklahoman on August 10, 1990; the Tulsa World on August 12, 1990; the Hugo Daily News on August 9, 1990; the Arkansas Democrat on August 8, 1990; the Arkansas Gazette on August 10, 1990; and the DeQueen Daily Citizen on August 7, 1990. Copies of the proposed rule were also sent to the Antlers American, Broken Bow News, McAlester News-Capital & Democrat, McCurtain Daily Gazette, and Southeast Times. Comment letters were received from 24 entities and are discussed below.

On August 24, 1990, the Service received a written request for a public hearing from Mr. Bill Rowton, City Manager, Antlers, Oklahoma. A public hearing was scheduled for November 19, 1990, in Antlers, Oklahoma. Interested parties were contacted and notified of the hearing, and a notice of the hearing was published in the **Federal Register** on October 29, 1990 (55 FR 43390).

A total of about 179 people attended the hearing. A transcript of this hearing is available for inspection (see **ADDRESSES**). Comments received in the hearing are also summarized below.

A total of 24 written comments were received at the Ecological Services Field Office in Tulsa, Oklahoma: 11 supported the proposed listing; 9 opposed the proposed listing; and 4 either commented on information in the proposed rule but expressed neither support nor opposition, provided additional information only, or were non-substantive or irrelevant to the proposed listing.

Additional oral or written statements were received from 37 parties at the hearing: 2 supported the proposed listing; 23 opposed the proposed listing; and 12 neither supported nor opposed the proposed listing or were non-substantive or irrelevant to the proposed listing. In addition, a petition opposing the listing and bearing approximately 3,036 signatures was received at the public hearing.

Comments were received from 10 Federal and State agencies and officials, 13 local officials, and 46 private organizations, companies, and individuals. Written comments and oral statements presented at the public hearing and received during the comment periods are addressed in the following summary. Comments of a similar nature are grouped into a number of general issues. These issues, and the Service's response to each, are discussed below.

Issue 1: Additional Localities. Several commenters suggested that the Ouachita rock-pocketbook occurs in waters beyond those identified in the proposed rule, including tributaries and ponds. Response: *Arkansia wheeleri* has not been collected from tributaries to the Kiamichi River. These tributaries generally do not contain habitats suitable for the Ouachita rock-pocketbook. The Kiamichi River downstream of Jackfork Creek, suggested by one commenter as containing the Ouachita rock-pocketbook, has been surveyed recently and is inhabited by this species downstream to Antlers, Oklahoma, as stated in this rule. Surveys indicate that the Ouachita rock-pocketbook has been eliminated from the Kiamichi River downstream of Antlers, primarily by construction of Hugo Reservoir. Surveys of the Little River upstream of Pine Creek Reservoir, downstream of Pine Creek Reservoir, and various tributaries of the river, indicate that the portion of the Little River inhabited by the Ouachita rock-pocketbook has been reduced to an 8-kilometer (5-mile) segment in Arkansas. Ponds and reservoirs do not offer suitable habitat for this species, although certain other mussel species are adapted to such bodies of water. The recent distribution of the Quachita rock-pocketbook, as described (see Background, above), is based on extensive mussel surveys both inside and outside of the historical range for the species. No available data indicate that important localities for the species remain in other areas. Commenters did not provide specific data on occurrence of the Ouachita rock-pocketbook in additional waters. The Service would appreciate receiving any additional distribution data on this species. However, the potential discovery of unknown populations, unless very extensive, would not offset the loss of *A. wheeleri* from the Ouachita River, lower Kiamichi River, and lower Little River.

Issue 2: Documented Range. One commenter suggested that the species' net range has not decreased, based on discovery in 1989 of Ouachita rock-pocketbook mussels in a 50-kilometer (30-mile) segment of the Kiamichi River not previously known to be inhabited. Response: In reviewing the status of the Ouachita rock-pocketbook, the Service has considered not only the upper Kiamichi River but also reductions in

habitat throughout the mussel's overall range. Despite the cited discovery, the Ouachita rock-pocketbook appears to have been eliminated from at least 30 kilometers (20 miles) of the Kiamichi River, 55 kilometers (35 miles) of the Little River, and 50 kilometers (32 miles) of the Ouachita River. In addition, the 1989 discovery augments the most secure Ouachita rock-pocketbook population (the Kiamichi River population), whereas losses on the Ouachita River and Little River represent the complete loss of one population and a major reduction of another. Loss of multiple viable populations is detrimental to a species because of reduced genetic diversity and increased vulnerability to localized threats.

Issue 3: Abundance. Several commenters suggested that the Ouachita rock-pocketbook is more abundant than indicated in the proposed rule. One commenter cited a recent study finding the mussel in a broader range of habitats and with a greater reproductive potential than previously known.

Response: Due to the difficulty of identifying mussel species, it is likely that many people have mistaken more common mussel species for the Ouachita rock-pocketbook. The Kiamichi River supports a diverse mussel fauna of more than 25 species, several of which are common to abundant. Scientists studying the Ouachita rock-pocketbook have consistently found it to be a rate species. Although scientists recently discovered the Ouachita rock-pocketbook in certain pool habitats and indicated that it has a greater reproductive potential than previously thought, they still considered the species to be rare.

Issue 4: Natural Rarity. Several commenters accepted the fact that the Ouachita rock-pocketbook is rare, but suggesting that it is not declining from historical abundance and does not warrant an endangered status. One commenter cited a recent study finding that age structure of the population, as reflected in recent Ouachita rock-pocketbook shells, did not appear to have changed from that indicated by older shells.

Response: The referenced study dealt with Ouachita rock-pocketbooks in the Kiamichi River only, which the Service recognizes as a healthy population. Concern about the Ouachita rock-pocketbook largely results from elimination and reduction of populations from other major portions of the species' historic range. This loss of populations, coupled with natural rarity and continued threats, supports endangered status for the Ouachita rock-pocketbooks.

Issue 5: Survey Methods. Several commenters questioned various methods and assumptions used in surveys of the mussel. Some commenters questioned restriction of the most recent studies to the main stem of the Kiamichi River.

Response: Surveys for the Ouachita rock-pocketbook and other mussels, both within and outside the complete historical range of *A. wheeleri*, have been used to identify the species' current distribution. The most recent studies have provided additional biological information on this species from the only river system where a substantial, healthy population remains.

One commenter noted reservations stated in one study regarding effectiveness of an aerial photograph survey method and a pool sampling method.

Response: The methods noted were supplemental methodologies and ample data were produced from other methods and a source to support the listing action.

One commenter suggested that survey areas had experienced drought conditions and that such conditions resulted in a incorrect indication of the mussel's normal occurrence.

Response: The surveys for *A. wheeleri* encompassed periods of high flow as well as low flow. The Service believes that the various river conditions experienced during the surveys did not prevent an accurate determination of the mussel's status, using the study procedures employed.

Several commenters suggested that mussels hibernate during winter months and were thus underestimated by winter surveys.

Response: The Service knows of no scientific studies indicating that unionid mussels retreat to less accessible habitats to undergo winter hibernation. Furthermore, virtually all surveys conducted on the Ouachita rock-pocketbook were performed at times other than winter.

One commenter took issue with information related in one study that catfish were no longer fished below Sardis Dam. The commenter interpreted the statement to mean that catfish are a host for glochidia of the Ouachita rock-pocketbook. The commenter also produced evidence of successful fishing for catfish below Sardis Dam, and implied, therefore, that other aspects of the study were not reliable. Response: The subject account does not indicate catfish to be hosts for glochidia of the Ouachita rock-pocketbook. Furthermore, the statement is clearly identified by the study authors as hearsay information obtained from local residents. It is not comparable to the study's essential results and conclusions, which were obtained using scientific procedures, direct observations by qualified biologists, and careful analysis and interpretation.

Issue 6: Identified Threats. Several commenters questioned the existence of evidence identifying various factors as threats to the Ouachita rock-pocketbook. One commenter questioned that bridge building constituted a threat to the mussel, and another questioned the effect of human activities other than dam building. Some commenters alleged that environmental quality had actually improved under current land practices and pollution controls, over conditions found in the past.

Response: Evidence of threats is partly provided by the statements of survey scientists, drawing on their observations of conditions in the field as well as their professional judgement. Other evidence is provided by a known potential for various human activities to produce environmental modifications far beyond the conceivable tolerances of the Ouachita rock-pocketbook. Further evidence is provided by experiences with other mussel species in which the impact of particular factors has been indicated by strong circumstantial evidence or has been well established through intensive study. Barring contrary evidence, the Service believes that available evidence is sufficient to implicate the factors identified as existing and potential threats. Despite some impressions of improved conditions, the available evidence indicates that dam construction and water pollution from various sources have greatly diminished suitable habitat for the Ouachita rock-pocketbook (see Summary of Factors Affecting the Species, below).

One commenter questioned the importance of the Asiatic clam, *Corbicula fluminea*, as a threat to the Ouachita rock-pocketbook. The commenter stated there is no clear-cut evidence that *Corbicula* seriously impacts any mussel population.

Response: Corbicula fluminea is identified as a potential threat based on concerns expressed by a number of scientists regarding that species. Since its introduction, *C. fluminea* has spread rapidly through the river systems of North America and is found in the river systems inhabited by the Ouachita rock-pocketbook. It is environmentally tolerant and quite prolific, producing tremendous populations under favorable conditions. Increases in numbers to the

point of displacing native mussel species from their habitats, competing for food, or causing other adverse effects have not yet been documented. Nevertheless, because of the concerns expressed by some biologists, the Service believes that *C. fluminea* warrants identification as a potential threat that should be evaluated as populations have further opportunity to develop in the range of the Ouachita rock-pocketbook.

Issue 7: Predation. Some commenters suggested that predation by raccoons, otters, herons, and other predators might be a factor affecting the Ouachita rock-pocketbook. Some implied that listing of the mussel was contradicted by efforts of the Oklahoma Department of Wildlife Conservation to reintroduce the river otter, a known predator of mussels, to streams of eastern Oklahoma.

Response: River otters, raccoons, muskrats, and certain other predators regularly consume a large number of mussels along with other aquatic and terrestrial organisms. For that portion of their diets consisting of mussels, the large majority of individuals consumed would be members of species more common than the Ouachita rock-pocketbook. The river otter was once a natural component of the riverine ecosystems of eastern Oklahoma and Arkansas, and apparently coexisted with the Ouachita rock-pocketbook before settlement, without eliminating that species. The Service does not have data indicating that predation by river otters or other predators (1) has been enhanced above natural levels by anthropogenic factors, (2) has played a role in reduction of the mussel's range, or (3) constitutes a present or future threat to the Ouachita rock-pocketbook. However, listing of the Ouachita rock-pocketbook would increase the likelihood of studying predator effects on the mussel and, if determined to be significant, of influencing State wildlife management programs affecting predator populations. Finally, identification of predation as a threat to the mussel would strengthen the evidence for listing the Ouachita rock-pocketbook, rather than weaken it.

Issue 8: State Protection. One commenter asked on behalf of an Oklahoma State Legislator if provision for increased protection of the Ouachita rock-pocketbook through amendment of Oklahoma's State endangered species act would remove the need for Federal listing.

Response: Inadequacy of existing regulatory mechanisms is one of five factors considered in the listing of a species. Because section 4(a)(D) of the Act specifies existing mechanisms, protections that might be provided through future mechanisms cannot be considered in a pending listing action. Furthermore, existing mechanisms would be considered an adequate substitute for Federal listing only if they provided a reasonably certain means of improving the species' status, and effectively removed the other factors qualifying the Ouachita rock-pocketbook for Federal listing. Benefits provided to the species under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against many harmful activities (See Available Conservation Measures, below). These benefits will apply to populations of the Ouachita rock-pocketbook both in Oklahoma and Arkansas.

Issue 9: Sufficiency of Information. A number of commenters questions the sufficiency of Service information supporting the listing. Many of these and other commenters suggested further study of the mussel as an alternative course of action.

Response: Section 4(b)(6) of the Act requires that listing determinations be made within one year of the proposal. The Service is required to make listing decisions solely on the basis of the best scientific and commercial data available. The Service can postpone listing if substantial disagreement exists among experts regarding the sufficiency or accuracy of available data on the status of the species. No such disagreement exists for the Ouachita rock-pocketbook. The Service has carefully reviewed the status of the Ouachita rock-pocketbook and believes that available information fully supports immediate listing of the species.

Some commenters pointed to placement of the Ouachita rock-pocketbook under two different generic names by different biologists as an indication of inadequate knowledge about the species and a lack of agreement within the scientific community.

Response: Many species have experienced changes in scientific nomenclature. Past changes in taxonomy of the mussel have simply represented different researchers' views on the phylogenetic relationship of the Ouachita rock-pocketbook to another mussel species. There is no question that the Ouachita rock-pocketbook is a distinct species, and the difference in names used has no bearing on the species' status. All biologists familiar with the Ouachita rock-pocketbook agree, in fact, that the species should be listed as endangered.

Several commenters suggested that insufficient information was available on the species' distribution, its microhabitat preferences, environmental tolerances, reproduction, host species, and other biological aspects, for the listing to proceed.

Response: The Service believes that surveys to confirm the species' current distribution and abundance have provided adequate information to support the listing. The Service also believes it has sufficient information to identify principal threats. Scientists have generally identified the habitats occupied by the species, its reproductive potential, and population characteristics within the Kiamichi River. The Service believes it is possible to determine that a species is endangered or threatened on the basis of its documented decline and evidence of threats, without knowing all details of its habitat needs for life history. Once the Service has sufficient information to make the essential determinations, there is no reason to delay a listing decision in order for additional information to be obtained. The Service must make a determination on the basis of the best available scientific and commercial information. All available information has been used in developing the final rule. Collection of additional information regarding unknown or inadequately known aspects of the mussel's biology will be important to conservation of the species. Ongoing studies noted by some commenters will provide some of this information. Other needed information will be obtained through future studies, which will be made possible through Federal listing of the species.

Issue 10: Critical habitat. One commenter questioned whether critical habitat was not being designated to avoid compensating landowners for loss of property value.

Response: Critical habitat is not being designated because it is not considered prudent. After taking into account potential risks and benefits, the Service believes designation of critical habitat would have a net adverse effect on the species (see Critical Habitat, below). The Endangered Species Act provides no means of compensating landowners for devaluations, if any, of property designated as critical habitat. Economic impact provisions permit areas to be considered for exclusion from critical habitat if the benefits of exclusion outweigh the benefits of designation, so long as such exclusion will not result in extinction of the species concerned.

Issue 11: Future Actions. One commenter asked what would be the next step in the Service's process and how long before a ruling would be made.

Response: Following closure of the public comment period, the Service's next step was to consider the best available scientific and commercial information, which has resulted in this final rule. The Act requires that, within one year of publishing a proposed rule, the Service must publish a final rule, withdraw the proposed rule, or extend the proposed rule for up to six months, because of substantial disagreement regarding the sufficiency or accuracy of the available data.

Some commenters asked about actions that occur following listing and whether species were ever removed from Federal lists.

Response: Following listing, the Act provides for recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices (see Available Conservation Measures, below). Listing provides means by which the Service and other parties can seek to improve the status of species. The objective of these efforts is to recover the species so that they no longer require the protections of the Endangered Species Act. Through updated status reviews, species can and have been removed from the list of endangered and threatened species for reasons of recovery, extinction, and original data in error.

Issue 12: Translocation. Some commenters suggested translocation of the mussel as an alternative action to listing.

Response: Translocation might be determined to be a desirable conservation action but could be recommended only after further research on the species. Research on this or other conservation strategies is one of the benefits that will be provided by listing of the species. However, to offer a potential for improving the species' status, translocation would require that suitable unoccupied habitat be available. This could present a problem, since without evidence of other factors, it would be necessary to assume that unoccupied habitats are unsuitable for the Ouachita rock-pocketbook for one or more reasons. Aside from these considerations, translocation alone would not improve the species' status or reduce threats enough to make listing unnecessary.

Issue 13: Social and Economic Impacts. A number of commenters expressed concerns regarding potential effects of listing the Ouachita rock-pocketbook on general socioeconomic conditions or specific types of public and private activities.

Response: The Service is required to base decisions regarding endangered or threatened status solely on biological considerations and is prohibited from allowing economic or other nonbiological factors to affect such decisions. However, the actual extent and limits of listing effects on socioeconomic conditions are usually not as great as many people fear. Only activities involving the Federal government must undergo additional evaluation with respect to potential effects on the Ouachita rock-pocketbook. Federal agencies will be required to consult with the Service if they propose to authorize, fund, or carry out any activities that may affect the Ouachita rock-pocketbook. Through consultation, these agencies will determine whether and in what manner they can carry out their activities consistent with the jeopardy provision of section 7(a)(2) of the Act. Experience has shown that, in most cases, such consultation results in minor modifications to the activities, rather than major modifications or irresolvable conflicts. Furthermore, although some federally involved activities would have a reasonable potential to affect the mussel (e.g., dams, hydropower facilities, bridges, pipeline crossings, gravel operations, wastewater discharges), other Federal actions would have little potential to directly affect the species (e.g., Federal loan programs, upland developments). Other activities by individuals, private entities, local governments, or state governments that do not involve Federal agencies would be affected only by the Act's prohibitions against take of the species and other practices (see Available Conservation Measures, below).

Issue 14: Purpose of the rule. One commenter stated that listing of the mussel was not justified as a means to stop construction of Tuskahoma Dam.

Response: Species are listed on the basis of biological information and not for the purpose of affecting any activity or project. As stated above, listing of the Ouachita rock-pocketbook would not create an absolute prohibition against building of dams but simply a requirement for federally involved dams and other projects potentially affecting the mussel to be evaluated through particular procedures to ensure compliance with the Act.

Issue 15: Importance of Endangered Species. A number of commenters questioned the importance and/or feasibility of removing impacts to endangered species, or the importance of listing or conserving endangered species in general.

Response: In passing the Endangered Species Act, Congress has declared that all Federal departments and agencies shall seek to conserve endangered and threatened species because "these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people." The listing process is one of the Act's fundamental methods to scientifically and objectively provide for conservation of endangered and threatened species. Listing of species is a means of determining the status of those species and is not constrained by the feasibility or prospect of recovering the species. Results seen with a number of species indicate that existing and potential threats can be feasibly reduced through the protections provided by the Act. The Service believes that an active recovery program for the Ouachita rock-pocketbook will substantially augment numbers to a point where extinction is far less probable than indicated by recent trends.

Issue 16: Wetland Protection and Land Controls. Some commenters asked if the Endangered Species Act was connected with Service initiatives to protect wetlands, such as those identified in the Region II Wetlands Regional Concept Plan, prepared under the Emergency Wetlands Resources Act.

Response: There is no deliberate connection between the Endangered Species Act and Service efforts to protect wetlands, although the two may coincide if particular wetlands are habitat for endangered or threatened species. Habitat protections provided by the Act would apply to wetlands if those areas are important to the conservation of listed species. However, other means are available and are used by the Service to protect wetlands, whether or not they are inhabited by listed species.

Some commenters asked if the Service would seize land along the Kiamichi River without due compensation to property owners.

Response: The Service does not condemn lands for endangered species habitat, wetland protection, or other purposes, except under highly unusual circumstances; in those rare instances, the Service is required to pay fair market value.

One commenter asked if the Endangered Species Act is a form of land use legislation.

Response: The Act provides means for conserving ecosystems upon which endangered or threatened species depend. The Act does not restrict use of lands to particular purposes or activities. However, if there is Federal involvement, land use must be consistent with the provisions of the Act.

Issue 17: Positions of Congressional Members. One commenter asked what Oklahoma Congressmen and U.S. Senators support the listing proposal.

Response: The Service has no indication of support from members of the Oklahoma congressional delegation. In past contacts with staff of former Congressman Wes Watkins' office, no objection to the listing was made. Current District 3 Congressman Bill Brewster's office has expressed opposition to the listing until additional studies are performed.

Issue 18: Notification and Hearing. Some commenters complained that notification of the proposed rule was inadequate.

Response: Steps taken by the Service to notify the public of the proposed rule are summarized at the beginning of this section. These steps fully met or surpassed the requirements of the Administrative Procedure Act and the Endangered Species Act for public notification.

One commenter requested a postponement of the public hearing.

Response: The Service arranged the hearing in coordination with local officials and attempted to avoid obvious conflicts in selecting a date. However, it is virtually impossible to schedule public meetings at a time that is convenient for everyone. The hearing was held as scheduled and was well attended. The public comment period was reopened for 21 days, providing further opportunity to comment for any interested parties unable to attend the hearing.

Issue 20: Some commenters expressed concern about trespass on private property.

Response: Service personnel and biologists conducting status surveys for the Service consistently obtained permission to cross property or used public access points to perform field work for the mussel. Service policy prohibits ingress on private property without the landowner's permission.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Ouachita rock-pocketbook should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Ouachita rock-pocketbook (*A. wheeleri*) are as follows:

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

Water quality deterioration and reservoir construction have apparently been the principal reasons for this species' precipitous decline. Reservoirs inundate stream habitats needed by most mussel species and can affect downstream habitats by cold water releases and fluctuating water levels. Colder water probably has a direct impact on mussel growth by reducing metabolic rates (Mehlhop-Cifelli and Miller 1989). Reservoir alterations can also decrease nutrients and reduce fish host availability for glochidia (Mehlhop-Cifelli and Miller 1989).

On the Ouachita River, the type locality has been severely polluted, making it unsuitable for many mussel species, including the Ouachita rock-pocketbook. The Ouachita River has also been impacted by several reservoirs. Clarke (1987) indicates these impoundments have likely contributed to the species' decline in this drainage.

On Little River, the impoundment of Pine Creek Reservoir (1969), hypolimnetic releases from Pine Creek Dam, periodic pollution discharges into Rolling Fork, and impoundment of Millwood Reservoir (1966) have caused the loss of many mussel species, including the Ouachita rock-pocketbook, from extensive segments of the river. Water quality in Little River is so poor downstream of the confluence with the Rolling Fork [approximately 8 kilometers (5 miles) east of the Oklahoma-Arkansas state line], that *A. wheeleri* apparently does not survive there. Sewage discharges from McCurtain County, Oklahoma, and scattered gravel dredging operations affect water quality in the remaining segment of Little River where this mussel is found. The Little River population is also potentially threatened by hypolimnetic releases from Broken Bow Reservoir (impounded in 1968) in McCurtain County, Oklahoma.

The lower reach of the Kiamichi River, formerly inhabited by the Ouachita rock-pocketbook, has been impounded by Hugo Reservoir (1974). The authorized Tuskahoma Reservoir, if constructed, would inundate upper reaches of the river inhabited by the Ouachita rock-pocketbook and affect the remaining population and its habitats downstream of the reservoir. The proposed addition of hydropower at Sardis Reservoir (impounded in 1983) on Jackfork Creek (a tributary of the Kiamichi River, Pushmataha County, Oklahoma) would also be a threat to this mussel.

Gravel is being mined at sites on the Kiamichi River, where *A. wheeleri* occurs. Bridge construction upstream of another site on the Kiamichi River has caused considerable siltation (Mehlhop-Cifelli and Miller 1989), which adversely affects this species. Elevated levels of mercury have been found in fish samples from the Kiamichi River near Big Cedar, Oklahoma (EPA, *in litt.*, 1989). The source of this mercury is presently unknown but could pose a serious threat to the continued survival of this species.

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

This rare species occurs in such low numbers that removal by private collectors and scientists poses an additional threat. Its rarity and unusual shell features make it a desirable species for private collectors. Considering the historic rarity of this species and significant loss of its historic habitat, the collection of live specimens could result in the loss of a significant portion of the surviving populations.

C. Disease or Predation

Although the Ouachita rock-pocketbook is undoubtedly consumed by predatory animals, there is no evidence that predation threatens the species' continued existence. Disease is not an apparent threat.

D. The Inadequacy of Existing Regulatory Mechanisms

The State of Oklahoma lists the Ouachita rock-pocketbook as a State endangered species, but this listing does not provide habitat protection. The State of Arkansas provides no special protection for the species or its habitat. The Act would provide additional protection and encourage active management through "Available Conservation Measures" discussed below.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The exotic Asiatic clam (*C. fluminea*) occurs in Hugo Reservoir and portions of the Kiamichi River, and the population is moving slowly upstream (Charles M. Mather, *in litt.*, 1989). This environmentally adaptive and tolerant mollusk may adversely impact the Ouachita rock-pocketbook and other native mussel fauna. In addition, low Ouachita rock-pocketbook densities

make the fertility and breeding success of this species susceptible to any factors that reduce existing populations.

The Service has carefully assessed the best scientific and commercial information available regarding past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Ouachita rock-pocketbook (*A. wheeleri*) as endangered. Historic records reveal that while the species has always been extremely rare, it was once considerably more widespread than it is today. At most, only two small populations are known to survive. These populations are threatened by a variety of factors including reservoir construction, cold water releases, stream alteration, and pollution. Owing to the species' history of population losses and the vulnerable nature of remaining populations, threatened status does not appear appropriate. A decision to take no action would exclude the Ouachita rock-pocketbook from needed protection available under the Act. Therefore, no action or listing as threatened would be contrary to the Act's intent. Critical habitat is not being designated for the Ouachita rock-pocketbook for reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary of the Interior designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for the Ouachita rock-pocketbook. Loss of even a few individuals to collectors and vandals could have a severe impact on the survival of the species. Listing of *A. wheeleri* is opposed by many local citizens. Clams and mussels are filter feeders and very susceptible to a wide variety of pollutants, such as certain pesticides and other chemicals. The sensitivity of mussels to introduced toxins makes *A. wheeleri* particularly vulnerable to vandalism. Publication of critical habitat descriptions and maps would increase the vulnerability of the species to collectors and vandals without significantly increasing protection. Therefore, it would not now be prudent to determine critical habitat for the Ouachita rock-pocketbook.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. These measures are discussed, in part, below.

Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. A recovery plan will be developed following listing of the Ouachita rock-pocketbook as an endangered species. This plan will draw together State, Federal, and local agencies having responsibility for conservation of *A. wheeleri*. The recovery plan will outline an administrative framework, sanctioned by the Act, for agencies to coordinate their activities and cooperate to prevent the extinction of this species and to enhance its recovery.

The Act also provides for possible land acquisition and cooperation with the States. Pursuant to section 6, the Service would be able to grant funds to the States of Oklahoma and Arkansas for management actions aiding the protection and recovery of the Ouachita rock-pocketbook.

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)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed 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. If through consultation, the Service determines that a Federal project is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of any designated critical habitat, the Service may recommend reasonable and prudent alternatives to the proposed action.

A variety of Federal agencies have jurisdiction and responsibilities potentially affecting the Ouachita rock-pocketbook, and section 7 consultation may be required in a number of instances. Federal involvement is expected to include the U.S. Army Corps of Engineers' multipurpose reservoir activities, Federal Highway Administration construction projects, Environmental Protection Agency pollution control and pesticide use programs, and U.S. Forest Service management activities on the Ouachita National Forest. The Corps of Engineers has received authorization to construct Tuskahoma Reservoir on the Kiamichi River; the dam would be located south of the town of Albion. This reach of the river and areas downstream are crucial to the recovery and survival of the Ouachita rock-pocketbook. Furthermore, the Corps of Engineers has studied the addition of hydropower at Sardis Reservoir, located on Jackfork Creek, a primary tributary of Kiamichi River near Clayton, Oklahoma. The Environmental Protection Agency would be involved with efforts to prevent water quality degradation and to approve the use of pesticides within the known range of the species. These projects and others have the potential to significantly impact Ouachita rock-pocketbook populations.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, 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).

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Authors

The primary authors of this final are Alan David Martinez and Sonja E. Jahrsdoerfer, U.S. Fish and Wildlife Service (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

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

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 § 17.11(h) by adding the following, in alphabetical order under "CLAMS" to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Clams							
Rock-pocketbook, (Wheeler's pearly mussel).	Ouachita *Arkansia (Arcidens) wheeleri*	U.S.A. (AR, OK)	NA	E	446	NA	NA

Dated: September 25, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–25470 Filed 10–22–91; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB42

Endangered and Threatened Wildlife and Plants; the Razorback Sucker (Xyrauchen texanus) Determined To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines the razorback sucker (*Xyrauchen texanus*) to be an endangered species under the authority of the Endangered Species Act of 1973, as amended. This native fish is found in limited numbers throughout the Colorado River basin. Little evidence of natural recruitment has been found in the past 30 years, and numbers of adult fish captured in the last 10 years demonstrate a downward trend relative

to historic abundance. Significant changes have occurred in razorback sucker habitat through diversion and depletion of water, introduction of nonnative fishes, and construction and operation of dams. Further changes are anticipated as these activities continue. Listing the razorback sucker as endangered will afford this species full protection under the Endangered Species Act.

EFFECTIVE DATE: November 22, 1991.

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 Field Office, 2060 Administration Building 1745 West 1700 South, Salt Lake City, Utah 84104–5110.

FOR FURTHER INFORMATION CONTACT: Patricia A. Schrader, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, 529–25½ Road, suite B–113, Grand Junction, Colorado 81505/6199, (303) 243–2778.

SUPPLEMENTARY INFORMATION:

Background

The razorback sucker was described by Abbott (1861) from a single mounted specimen captured from the Colorado River. He placed it in the genus *Catostomus*, but Eigenmann and Kirsch, after further study, assigned it to its own genus, *Xyrauchen* (Kirsch 1889). Also known as the humpback sucker, the adult razorback sucker is readily identifiable by the abrupt sharp-edged dorsal keel behind its head and a large fleshy subterminal mouth that is typical of most suckers. Adult fish are relatively robust, often exceeding 3 kg (6 lbs.) in weight and 600 mm (2 ft.) in length. Although traces of the developing keel have been observed externally on some cultured specimens as small as 85 mm (3.3 in.) (Snyder and Muth 1990), the dorsal keel of juvenile razorback suckers may not be obvious in other individuals, making them difficult to distinguish from other sucker species.

The razorback sucker was once abundant throughout 5,635 km (3,500 mi.) of the Colorado River basin, primarily in the mainstem and major tributaries in Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming; and in the States of Baja California Norte and Sonora of Mexico (Ellis 1914, Minckley 1973). The Colorado River was divided into upper and lower basins at Lee Ferry, Arizona (approximately 14 km (9 mi.) below Glen Canyon Dam), by the Colorado River Compact of 1922. There are many accounts of razorback suckers during early settlement of the lower basin (Gilbert and Scofield 1898, Minckley 1973) and a significant commercial fishery for them existed in southern Arizona in the early 1900's (Hubbs and Miller 1953, Miller 1964). In the upper basin, Jordan (1891) reported razorback suckers to be very abundant at Green River, Utah, in 1889. Residents living along the Colorado River near Clifton, Colorado, observed several thousand razorback suckers during spring runoff in the 1930's and early 1940's (account in Osmundson and Kaeding 1989a).

In recent times, razorback sucker distribution has been reduced to about 1,208 km (750 mi.) in the upper basin (McAda and Wydoski 1980, Holden and Stalnaker 1975, Ecology Consultants 1978). In the lower basin a substantial population exists only in Lake Mohave, but they do occur upstream in Lake Mead and the Grand Canyon and downstream sporadically on the mainstem and associated impoundments and canals (Marsh and Minckley 1989). Marsh and Minckley (in press) estimated approximately 60,000 adult razorback suckers still occur in Lake Mohave, and Lanigan and Tyus (1989) estimated that 758 to 1,138 razorback suckers still inhabit the upper Green River. In the upper Colorado River subbasin most razorback suckers occur in the Grand Valley area (Valdez et al. 1982). Observations in other areas are spotty and inconsistent and are generally viewed as incidental captures. The number of adult captures in the Grand Valley had declined appreciably since 1975 (Osmundson and Kaeding 1991). No significant recruitment to any population has been documented in recent years (Tyus 1987a, McCarthy and Minckley 1987, Osmundson and Kaeding 1989a).

Information on behavior and habitat needs of the razorback sucker is limited. Until recently, it has not been a major objective of most upper basin investigations and it is rarely collected in fisheries investigations directed at the three endangered Colorado River fishes: The Colorado squawfish (*Ptychocheilus lucius*); humpback chub (*Gila cypha*); and bonytail chub (*Gila elegans*). However, information has been accumulated in conjunction with other studies, and some specific studies have been conducted.

In 1981, the U.S. Fish and Wildlife Service (Service) and the Arizona Game and Fish Department began a reintroduction and monitoring program in historic razorback sucker habitats of the Gila, Salt, and Verde Rivers. The State of California initiated a similar effort on the Colorado River mainstem in 1986 (Minckley et al. in press). In the past 10 years, over 13 million razorback suckers were stocked in 57 sites in Arizona, primarily in the Verde, Gila, and Salt Rivers and their tributaries (Duane Shroufe, Director, Arizona Game and Fish Department, *in litt.*, 1990). Recaptures from these stocking efforts have been scarce because most fish stocked were fry (which normally experience high attrition), stocked fish were heavily preyed upon, and there were inadequate survey efforts for the large reintroduction area (Brooks 1986). There are indications that populations are being established in isolated habitats and in the uppermost reservoirs of the drainages being stocked (Duane Shroufe, Director, Arizona Game and Fish Department, *in litt.*, 1990).

Some adult razorback suckers migrate considerable distances to specific areas to spawn (Tyus 1987a, Tyus and Karp 1990). Spawning occurs in the lower basin from January through April (Ulmer 1980, Langhorst and Marsh 1986, Mueller 1989). In the upper basin, ripe razorback suckers were observed in suspected spawning areas in the Green River from April 20 to June 14, from 1981 to 1989 (Tyus 1987a, Tyus and Karp 1990). Osmundson and Kaeding (1991) summarized captures by various investigators of razorback suckers in the Grand Valley, and report that 40 of the 42 running ripe adults captured were captured between May 24 and June 17. Water temperatures during spawning in the lower basin ranged from 11.5–18°C (52.7–64.4°F) (Douglas 1952, Ulmer 1980, Langhorst and Marsh 1986) while temperatures recorded in the upper Green River ranged from 9–17°C (48–63°F) (Tyus and Karp 1990). Spawning is usually accomplished over gravel bars that are swept free of silt by currents and several males accompany a single female (Jonez and Sumner 1954, Ulmer 1980). In Lake Mohave and Senator Wash Reservoir, spawning takes place on gravel bars swept clean by wave action (Ulmer 1980, Bozek et al. 1984). Tyus (1987a) collected ripe adults over coarse sand substrates and in the vicinity of gravel or cobble bars, but direct observation of spawning was not possible because of high turbidities prevalent during that time of year. In Senator Wash Reservoir and Lake Mohave, the eggs apparently settled onto gravel and into interstices swept clean by the spawning activity; larvae remained in the gravel until swim-up (Ulmer 1980, Mueller 1989).

A number of investigators have collected viable fertilized eggs and larvae in the areas of observed spawning activity (Bozek et al. 1984, Ulmer 1980, Marsh and Langhorst 1988, Tyus 1987a), but few have collected larvae larger than 14 mm (0.6 in.) in the

wild. This indicates little or no successful recruitment of wild razorback suckers (Tyus 1987a). Marsh and Langhorst (1988) recovered larvae up to 20 mm (0.8 in.) total length in an isolated backwater in Lake Mohave where predators had been previously eradicated, and growth to 20 cm (7.9 in.) was reported for juvenile razorback suckers in the same location (Minckley et al., in press). However, these fish disappeared within a month following reinvasion of the backwater by predators. Most investigators have reported concentrations of carp (*Cyprinus carpio*), green sunfish (*Lepomis cyanellus*), bluegill (*Lepomis macrochirus*), channel catfish (*Ictalurus punctatus*), and largemouth bass (*Micropterus salmoides*) in razorback sucker spawning areas (Jonez and Sumner 1954, Marsh and Langhorst 1988, Ulmer 1980, Bozek et al. 1984). Larvae and larger razorback suckers have been found in stomachs of predatory fishes such as green sunfish, warmouth (*Lepomis gulosus*), channel catfish, flathead catfish (*Pylodictis olivaris*), and threadfin shad (*Dorosoma petenense*) (Marsh and Langhorst 1988, Langhorst 1989, Brooks 1986).

Habitat needs of young and juvenile razorback suckers in the wild are largely unknown because they rarely have been encountered by researchers, particularly in native riverine habitats (Tyus 1987a). Marsh and Langhorst (1988) observed that larval razorback suckers in Lake Mohave remained near shore after hatching but either disappeared or migrated to depths in excess of 15 m (49 ft.) within a few weeks. Most juveniles have been collected from irrigation canals in southern California and Arizona (Marsh and Minckley 1989). Substantial numbers of razorback suckers have been reared through the juvenile and adult stages in hatcheries (Toney 1974, Hamman 1985) and in isolated ponds (Langhorst 1989, Osmundson and Kaeding 1989b), providing some information on growth rates and food habits.

Diets of razorback sucker larvae have been studied in Lake Mohave (Marsh and Langhorst 1988) and under experimental conditions (Papoulis 1986, Tyus and Severson 1990). Larvae from reservoirs selected *Bosmina* spp. (Cladocera) and avoided Copepoda, while larvae from backwaters or Lake Mohave selected *Bosmina* and avoided Rotifera (Marsh and Langhorst 1988). Dietary studies in controlled conditions indicated wide differences in their response to commercial fish foods (Tyus and Severson 1990). Information is not available on food habits of razorback sucker larvae from natural riverine habitats.

Only limited information has been accumulated on the food habits of adult razorback suckers, primarily due to their rarity and protected status under State law. Marsh (1987) examined the stomachs of 34 adult specimens from Lake Mohave and found contents dominated by planktonic crustaceans, diatoms, filamentous algae, and detritus. Jonez and Sumner (1954) reported midge larvae as the dominant food item in their stomach analysis of Lake Mohave razorback suckers. They also reported algae as the most common food item found in razorback sucker stomachs from Lake Mead, followed by plankton, insects, and decaying organic matter. Vanicek (1967) examined eight adult razorback sucker stomachs from the Green River and found them packed with mud or clay containing chironomid larvae, plant stems and leaves.

Using scales, Minckley (1983) estimated annual growth rates in the wild Lake Mohave population to be less than 10 mm (0.4 in.) per year after their seventh year of life. Recently, researchers have demonstrated the inadequacies of using scales to determine the age of razorback suckers and have shown that most razorback suckers captured in recent times are much older than their scales would indicate (McCarthy and Minckley 1987). Using sectioned otoliths, McCarthy and Minckley (1987) computed the ages of Lake Mohave razorback suckers collected in 1981–83 to be 24 to 44 years. Eighty-nine percent of the 70 fish sampled were estimated to have hatched prior to or coincident with impoundment. Disappearance of razorback suckers from lower basin reservoirs 40 to 50 years after impoundment was documented by Minckley (1983). McCarthy and Minckley (1987) predicted the Lake Mohave population is following this trend and may be extirpated before the year 2000. Tyus (1987a) concluded that razorback suckers in the Green River were substantially smaller and younger than those found in the lower basin, but no recent recruitment to the adult population was evident.

Adult razorback suckers are more vulnerable to capture during the spawning season. Tyus (1987b) reported them to be 10 times more prevalent in standardized electrofishing collections during the spring than during the remainder of the year. During spawning season, razorback suckers have been found in runs with coarse sand, gravel, and cobble substrate; flooded bottomlands and gravel pits; and large eddies formed by flooded mouths of tributary streams and drainage ditches (Tyus 1987a, Osmundson and Kaeding 1989a). Tyus (1987a) tracked six radio-implanted adult razorback suckers for 2 years, and found that they utilized the main channel of the Green and Duchesne Rivers. During non-breeding season, the fish were found in depths of 0.6 to 3.4 m (2.0 to 11.0 ft.), used sand or silt substrates, and water velocities of 0.1 to 0.6 m per second (0.33 to 2.0 ft. per second). Razorback suckers also selected near shore runs during the spring, but shifted to relatively shallow waters off mid-channel sandbars during the summer months. Except for spawning migrations, razorback suckers are fairly sedentary, moving relatively few kilometers over several months (Tyus 1987a, Tyus and Karp 1990). Valdez and Masslich (1989) tracked 17 razorback suckers throughout the winter on the Green River. They found that most of the radio-telemetered fish moved less than 5 km (3 mi.) throughout the winter. They also reported localized diel movement patterns that increased with fluctuating flows which they attributed to changes in water velocities. The radio-telemetered razorback suckers used slow run habitats, slack waters, and eddies. They selected depths of 0.6 to 1.4 m (2.0 to 4.6 ft.) and velocities of 0.03 to 0.33 m per second (0.1 to 1.1 ft. per second). Osmundson and Kaeding (1989a) reported the year-round movement and habitat use of one to four radio-telemetered adult razorback suckers over a 3-year period in the Grand Valley region of the upper Colorado River. They reported that pools and slow eddy habitats were predominantly used from November through April, runs and pools from July through October, runs and backwaters during May, and backwaters and flooded gravel pits during June. Selection of habitats of various depths changed seasonally; use of relatively shallow water occurred during spring and use of deep water during winter. Mean depths were 0.9 to 0.99 m (3.0–3.3 ft.) during May and June, 1.62 to 1.65 m (5.3–5.4 ft.) from August through September, and 1.83 to 2.16 m (6.0–7.1 ft.) from November through April.

The razorback sucker was proposed for listing as a threatened species on April 24, 1978, in the **Federal Register** (43 FR 17375). The proposal was withdrawn on May 27, 1980, in accordance with provisions of the 1978 amendments to the Endangered Species Act (Act) of 1978, as amended (16 U.S.C. 1531 *et seq.*). These provisions required the Service to include critical habitat in the listing of most species and to complete

the listing process within 2 years or withdraw the proposal from further consideration. The Service did not complete the listing process within 2 years.

A petition dated March 14, 1989, was received from the Sierra Club, National Audubon Society, The Wilderness Society, Colorado Environmental Coalition, Southern Utah Wilderness Alliance, and Northwest Rivers Alliance on March 15, 1989. The petition requested the Service to list the razorback sucker as an endangered species. A positive finding on this petition was made in June 1989 and subsequently published by the Service in the Federal Register on August 15, 1989 (54 FR 33586). This notice also stated that a status review was in progress and that the Service was seeking information until December 15, 1989. A proposed rule to list the razorback sucker as endangered was published in the Federal Register on May 22, 1990 (55 FR 21154). A public hearing was held on August 14, 1990, in Farmington, New Mexico.

Summary of Comments and Recommendations

In the May 22, 1990, proposed rule (55 FR 21154) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The initial comment period closed on July 23, 1990, but was reopened on July 27 and closed on August 27, 1990 (55 FR 30727). Appropriate State agencies, county governments, Federal Agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comment were published in the following papers between June 7 and June 14, 1990: Denver Post, Colorado; Rocky Mountain News, Colorado; Daily Sentinel, Colorado; Durango Herald, Colorado; Northwest Colorado Daily Press, Colorado; Times Independent, Utah; Vernal Express, Utah; Sun Advocate, Utah; Salt Lake City Tribune, Utah; Deseret News, Utah; Southern Utah News, Utah; Ogden Standard Examiner, Utah; and Casper Star Tribune, Wyoming. Newspaper notices were published on June 21, 1990, in the following papers: Mohave Miner, Arizona; Mohave Valley News, Arizona; and Farmington Times, New Mexico. Sixty-two written and eighteen oral comments were received (including duplicates from several commenters) and are discussed below. Comments (sometimes several from an organization) were received from 11 Federal and 7 State agencies, 10 local governments, and 47 private organizations, companies, and individuals. Forty-one comments supported listing, twenty-four comments were neutral, and nine comments were opposed to listing.

A public hearing was requested and held in Farmington, New Mexico, on August 14, 1990. Approximately 60 people attended the public hearing and 18 people presented oral statements.

It should be noted that many commentors surfaced issues or questions that concerned the razorback sucker but that were not pertinent to the two decisions that are the subject of this rulemaking, i.e., whether the razorback sucker merits listing and whether critical habitat should be designated. Predominant among these concerns was the potential impact of the proposed Animas-LaPlata Project on the Animas River and the razorback sucker, and the potential impact of listing and/or critical habitat designation on the proposed Animas-LaPlata Project and future water development. Copies of these letters were referred to the appropriate Service offices. Other commentors raised questions regarding the specifics of how the species would be protected or recovered and the impacts likely to ensue, for example, the impact of species listing on agricultural practices, operation of federally controlled dams, recreational opportunities, and other human activities; whether stocking of nonnative fishes would be impacted by listing; the extent of the species' range that would be protected; the degree of State-Federal partnership in species' protection; the need for additional research on the species; the use of hatcheries to recover the species; and how critical habitat designation might restrict current water-related management practices.

Though such concerns are understandable, they only can be addressed after the species is listed. The Act's amendments of 1982 made it clear that decisions to list a species must be made solely on biological considerations, and that economic or other nonbiological factors were not to be taken under consideration in the decision of whether to list. However, economic considerations are relevant if critical habitat is designated. Specifics on how the species would be protected and the impacts of such protection are more properly addressed on a case-by-case basis after the species is listed, i.e., during the course of Section 7 consultation and as specific recovery actions are proposed.

Written and oral comments pertinent to this rulemaking that were received during the comment periods are covered in the following summary. Comments of a similar nature or point are grouped into a number of general issues. These issues and the Service's response to each are discussed below.

Issue 1: All commentors who supported listing the razorback sucker supported listing it as endangered, except two Regions of the Bureau of Reclamation and the State of Nevada. The Bureau of Reclamation recommended listing the razorback sucker as threatened throughout its range. The State of Nevada recommended threatened status in the lower basin and endangered status in the upper basin. The Bureau of Reclamation stated that listing the razorback sucker as endangered could jeopardize or delay positive programs initiated in the upper and lower basins. They state that listing the species as threatened would allow more active management of the species.

Response: According to section 3 of the Act, a threatened species is defined as any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. An endangered species is defined as any species which is in danger of extinction throughout all or a significant portion of its range. After reviewing the biological data, the Service finds that the razorback sucker is clearly in danger of extinction throughout all of its range, due to its greatly reduced range, the extensive alteration of its natural habitats through impoundment and altered flow and temperature regimes, its apparent inability to recruit successfully in the wild, and the introduction of nonnative fish species. Therefore the razorback sucker qualifies as endangered.

Issue 2: One individual representing water development interests stated that the razorback sucker should not be listed as threatened or endangered in the Upper Colorado River Basin because he believes the razorback suckers in the upper basin are a distinct subpopulation, and that no data are available to indicate the upper basin population has experienced a serious decline. This individual also states that the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (Recovery Implementation Program) is adequate for recovery of the razorback sucker and listing would not provide any additional benefits.

Response: The Service has determined that the razorback sucker is in danger of extinction throughout all of its range, which includes the upper and lower basins. This rule presents information on the rarity of and threats to razorback suckers in the upper basin (see Factors A, C, and E, and "Background"). Factor D and "Available Conservation Measures" discuss the capabilities and limitations of the Recovery Implementation Program in protecting the razorback sucker and the additional benefits provided by listing the species.

Issue 3: Fourteen commentors expressed concern about critical habitat designation. Ten commentors supported designation of critical habitat; four commentors opposed designating critical habitat or including areas within critical habitat that might adversely impact their economic interests. Among the commentors supporting critical habitat designation, the following reasons or concerns were surfaced:

a. Five commentors believed critical habitat was capable of being determined and/or would provide habitat protection benefits to the species.

b. Two commentors thought it would limit the area that would need to be evaluated in determining impacts to the species.

c. Two commentors thought it would help in protecting against further introduction of nonnative fishes.

d. One commentor thought conservation measures could not be implemented without such designation.

e. One commentor questioned whether designation of critical habitat would preclude restoration efforts.

Response: There appears to be some misunderstanding regarding what designation of critical habitat means, and what benefits designation of critical habitat might provide for the razorback sucker.

Under section 3 of the Act, critical habitat is defined as "(i) the specific areas within the geographical area occupied by the species at the time it is listed * * *, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed * * *, upon a determination by the Secretary that such areas are essential for the conservation of the species." "Designation" means identification of critical habitat via rulemaking. Economic and any other relevant impacts must be taken into consideration prior to designation of critical habitat. After critical habitat has been designated, Federal Agencies must insure that their actions are not likely to result in the destruction or the adverse modification of this habitat, per section 7(a)(2) of the Act.

Critical habitat is not always designated for a listed species. It is not designated at the time of species listing if it is not determinable (i.e., if the biological needs of the species are not well known enough to permit identification of critical habitat or if sufficient information is not available to perform the required impact analysis). It is not designated if it is not prudent (i.e., if designation would increase the threat of taking or vandalism or it would not be beneficial to the species). The "Critical Habitat" section of this rulemaking explains why critical habitat designation is considered not determinable for the razorback sucker at this time.

With regard to the reasons or concerns surfaced by commenters supporting critical habitat designation:

(a) *Because it is determinable and/or would provide habitat protection benefits:* The Service does not find critical habitat to be determinable at this time for the reasons explained in the "Critical Habitat" section of this rulemaking. The Service will review existing data and the protections provided by listing the species, the Recovery Implementation Program, and other activities to determine whether determination and designation of critical habitat would provide habitat benefits over and above the protection provided to the razorback sucker following species listing.

(b) *Because it would limit the area of evaluation:* Designation of critical habitat highlights specific areas where special management considerations or protections are needed; however, it does not limit the area of evaluation for determining impacts to a listed species. Once a species is listed, it is protected throughout its range. Even if critical habitat was designated such that it was coincident with the razorback sucker's current range, proposed Federal actions that would alter flows or water quality upstream of this habitat would still need to be evaluated.

(c) *Because it would protect against further introduction of nonnative fishes:* At this time, it is not clear whether designation of critical habitat would deter future stocking of nonnative fishes beyond any deterrent resulting by listing the species as endangered. This point will be examined during the review of data and existing protections following species listing. As noted under Factor D, the Service can limit the introduction of nonnative species through agreements with the States or by withholding Federal funds or fish from Federal hatcheries for stocking proposals with potential to adversely impact the razorback sucker.

(d) *Because conservation measures could not be implemented:* It is not necessary to designate critical habitat in order to implement conservation measures. Conservation measures, which are used to avoid jeopardy to listed species, are currently provided in biological opinions for three species of endangered fish in the Colorado River basin which do not have critical habitat designated.

(e) *Whether it would preclude restoration efforts within existing habitat:* If critical habitat were to be designated, only federally authorized, permitted, or funded restoration efforts that would destroy or adversely modify critical habitat would be precluded. Because the purpose of any restoration effort would be to benefit the species and/or habitat, it is unlikely that designation of critical habitat would preclude restoration efforts.

Issue 4: One county in Utah stated that the introduction of the river otter into the Colorado River could be a threat to razorback suckers.

Response: The river otter's historic range included the Colorado River and its tributaries in Utah and Colorado. River otters and native fishes coexisted historically. The Utah Division of Wildlife Resources recently prepared an environmental assessment that examined potential conflicts between the reintroduction of the river otter and the rare and endangered fishes in the Colorado River system. It concluded that reintroducing the river otter would not have a significant impact on rare and endangered fish species. Diet studies conducted in Colorado found that crayfish and channel catfish comprised a major portion of the river otter's diet. If a negative impact on rare and endangered fishes is detected, river otter numbers could be controlled.

Issue 5: The Denver Water Department stated that the Two Forks project underwent section 7 consultation and was found not to be a threat to razorback suckers.

Response: The section 7 consultation conducted for the Two Forks project was for three Colorado River fishes currently listed as endangered: The Colorado squawfish; humpback chub; and bonytail chub. The razorback sucker was a candidate for Federal listing at the time of the subject section 7 consultation. Candidate species receive no legal protection under the

Act, and the razorback sucker was not addressed in the biological opinion issued for the Two Forks project. Therefore, the Service has not determined whether the Two Forks project is likely to jeopardize the continued existence of the razorback sucker.

Issue 6: One farm bureau asked that adverse impacts to private property owners be considered during the listing process.

Response: Only biological factors may be used in our decision on whether to list a species.

Issue 7: Several commentors asked whether the razorback suckers stocked in the lower basin during the last 10 years would be considered endangered if the species were listed. Also, one Federal Agency recommended that the razorback suckers stocked in the Gila, Salt, and Verde Rivers be designated as an experimental population.

Response: All razorback suckers, regardless of their origin or where they occur, would be fully protected under the Act upon listing. The Service cannot designate an existing naturally-occurring population as experimental. Once the razorback sucker is listed, any future reintroduction or augmentation would require a permit, or a rule could designate the stocked fish as an experimental population if the future reintroduction site is unoccupied habitat within historic range.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the razorback sucker should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the razorback sucker (*Xyrauchen texanus*) are as follows:

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

Once abundant and widely distributed throughout the Colorado River basin, the razorback sucker now inhabits approximately 25 percent of its original range. The razorback is considered rare, and of the four rare and endangered large-river native Colorado River basin fishes, only the bonytail chub (*Gila elegans*) is considered less common (McAda 1987). In the Lower Colorado River Basin, the razorback sucker occurs in substantial numbers only in Lake Mohave, in Arizona and Nevada. These fish are thought to represent the largest remaining population in the basin (Minckley 1983) but are expected to decline in numbers as they die and are not replaced. Razorback suckers are very rare and sporadic in the Colorado River, reservoirs, and canals downstream of Davis Dam (Marsh and Minckley 1989). In the Upper Colorado River Basin, razorback suckers are rare in the upper Green River, Utah; lower Yampa River, Colorado (Tyus 1987a, Tyus and Karp 1990); and mainstem Colorado River near Grand Junction, Colorado (Kaeding and Osmundson 1989). The razorback sucker is very rare throughout the remaining warmwater reaches of the Green, San Juan, and upper Colorado Rivers. Small numbers also occur in the Colorado, Dirty Devil, and San Juan arms of Lake Powell (Persons and Bulkley 1982, McAda 1987, Roberts and Moretti 1989).

Since 1910, 15 dams have been constructed on the lower Colorado River and its major tributaries, the Gila, Verde, and Salt Rivers. These dams have dewatered, cooled, or impounded most of the lower basin system so that little natural riverine habitat exists today. Glen Canyon Dam has reduced water temperatures for 384 km (238 mi.) through the Grand Canyon. Spawning has been observed in several reservoirs in the lower basin (Jonez and Sumner 1954, Loudermilk 1985) and razorback sucker larvae have been collected in Lake Mohave, Lake Havasu, Senator Wash Reservoir, and the Central Arizona Project canal (Bozek et al. 1984, Marsh and Langhorst 1988, Marsh and Minckley 1989). However, only four juvenile razorback suckers (33 to 54 mm, or 1.3 to 2.1 in.) have been collected from Lake Mohave since the 1950's, which indicates insufficient recruitment to the population (Marsh and Minckley 1989). In the upper basin, Lake Powell and Flaming Gorge Reservoir have impounded 500 km (310 mi.) of razorback sucker habitat and lowered water temperatures in another 105 km (65 mi.) of the Colorado and Green Rivers. Other upper basin reservoirs also have altered natural flow and temperature regimes. The last report of juvenile razorback suckers collected from the upper Colorado River was that of Taba et al. (1965) who collected eight individuals 90–115 mm (3.5–4.5 in.) in length downstream of Moab, Utah, during 1962–1964.

Dams and diversions also obstruct razorback sucker migration. Although little is known of the location of razorback sucker spawning areas prior to the construction of these facilities, it is believed that they have obstructed access to or impounded once important spawning areas. Early investigators frequently referred to spawning concentrations in small tributaries in the lower basin (Jordan 1891, Hubbs and Miller 1953). More recently, Tyus (1987a) and Tyus and Karp (1990) observed concentrations of razorback suckers near three suspected spawning areas in the upper Green River and lower Yampa River. Ulmer (1980) also observed spawning in Senator Wash Reservoir and Mueller (1989) did so in the tailwaters of Hoover Dam. Spawning has been observed in Lake Mead and Lake Mohave (Jonez and Sumner 1954, Minckley 1983, Langhorst and Marsh 1986). Radio-tracking and recapture of tagged razorback suckers demonstrates that some fish migrate considerable distances to spawn. Tyus (1987a) recaptured 21 adult razorback suckers in suspected spawning areas that had been previously tagged in other locations over a period of 8 years. Ulmer (1980), utilizing SCUBA gear and sonic tags, followed five adult razorback suckers in Senator Wash Reservoir to two specific areas where congregations of spawning razorback suckers were observed.

Storage and diversion of natural flows have resulted in an 18 percent reduction in mean annual discharge at the Green and Colorado river confluence 26 km (16 mi.) upstream of Lake Powell (U.S. Geological Survey (USGS) flow records, 1906–1982). Storage of high flows during the spring and releases of more water during the remainder of the year have reduced spring runoff by 28 percent in the Green River and 37 percent in the Colorado River during May and June (USGS flow records, 1906–1982). Reduction of these high spring flows has altered the natural flooding cycle and reduced the area of off-stream habitats used by razorback suckers (McAda 1977, Osmundson and Kaeding 1991). Tyus and Karp (1989) believed that flooding of bottomland during spring runoff was important to adults and rearing of young. Osmundson and Kaeding (1991) suggested that flooded bottomlands in the Grand Valley were historically the primary spawning habitats. The lack of recruitment of razorback suckers in the upper basin may be associated with losses of these inundated habitats (Osmundson and Kaeding 1989a and 1990, Tyus and Karp 1989).

Dam operations also can cause changes in daily flow regimes. Peaking power operations at Flaming Gorge

produced a 400 percent increase in daily flow fluctuations at Jensen, Utah (USGS flow records, 1906–1982). Tyus and Karp (1989) recommend low, stable flows for razorback suckers during summer, fall, and winter, after finding that such flows are necessary for growth and survival of young native fishes. Stable flows through ice breakup also were important for overwinter survival of young and adult native fishes.

Cooler water temperatures, as a result of dam operations, may have excluded the razorback sucker from portions of its original range (Vanicek 1967). Bulkley and Pimentel (1983) showed that adult razorback suckers preferred water temperatures between 22–25°C (71.6–77°F) and avoided water temperatures below 14.7°C (58.5°F) and above 27.4°C (81.3°F). Whereas winter temperatures drop well below this reported preference range throughout most of occupied razorback sucker habitat, summer temperatures are generally within the preferred range. During the day, riverine temperatures can vary greatly between off-stream and mainstream habitats. Grabowski and Hiebert (1989) recorded summer and fall water temperatures in backwaters of the Green River to be 2.5 to 3.8°C (4.5 to 6.8°F) warmer than the mainstream. While water temperature is dynamic and influenced by many variables, there are two reaches of the Green and Colorado Rivers where spring and summer temperatures are clearly below the preferred range of razorback sucker. These reaches occur directly below Flaming Gorge Reservoir for 105 km (65 mi.) where summer temperatures average less than 15°C (59°F) (USGS Water Resource Data), and below Lake Powell for 384 km (238 mi.) where summer water temperatures rarely exceed 15°C (59°F) (Carothers and Minckley 1981). Razorback suckers have rarely been captured in these reaches since completion of these dams (Vanicek 1967, Carothers and Minckley 1981).

The alteration of temperatures caused by the construction and operation of dams also may affect incubation time and survival of razorback sucker embryos. Incubation time to hatching varies inversely with water temperature, with longer hatching times required at lower temperatures. Gustafson (1975) reported that 5.5 days were required at 20°C (68°F), while Bozek et al. (1984) reported the following incubation periods: 19.4 days at 10°C (50°F); 11.1 days at 15°C (59°F); and 6.8 days at 20°C (68°F). Marsh (1985) found it required 9 days for larvae to hatch at 15°C (59°F) and 3.5 days at 25°C (77°F). Most investigators reported poor hatching success at temperatures below 15°C (59°F) and total mortality of eggs below 10°C (50°F). However, Bozek et al. (1984) noted only slightly lower survival rates at 10°C (50°F) than at 15 and 20°C (59 and 68°F).

Alteration of razorback sucker habitat will likely continue because several major reservoirs and water diversions are in the planning process or are under construction (e.g., Animas-La Plata Project, Muddy Creek Reservoir, Sandstone Reservoir, Central Utah Project). Further loss of flooded bottomland habitat important for spawning is likely to occur as landowners continue diking the Colorado River, particularly in the Grand Valley. Other, less direct influences such as decreased flow, alteration in stream hydrology, increased dissolved solids, altered temperatures, and other water quality changes may adversely affect the razorback sucker by reducing or degrading its habitat, interrupting spawning, and increasing competition for food and space by creating conditions favorable to nonnative fish species. Development activities that most threaten the razorback sucker occur in the upper basin where most of the remaining riverine habitats occur. Since 1980, the Service has conducted consultations under section 7 of the Act on over 100 federally funded or regulated projects in the upper basin that involved water depletions. Several transbasin diversions are planned or are under construction. The most prominent is the Central Utah Project which would divert 165,000 ac. ft. of water from the Green River to the Bonneville Basin.

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

Though once extensively used for food when available in large number (Minckley 1973), the razorback sucker is no longer abundant and markets are no longer engaged in such enterprises. In the lower basin, there were once enough razorback suckers to support a commercial fishery (Hubbs and Miller 1953) but all States within its current range now have laws that protect it from harvest (Minckley et al. in press). Therefore, overutilization is not considered to be a threat today.

C. Disease or Predation

There is no evidence that disease is a significant factor in the current status of the razorback sucker. However, Minckley (1983) reported many old individuals captured in Lake Mohave were blind in one or both eyes and showed other signs of disease or injury. Several investigators have recently isolated pathogens from razorback suckers, but none have concluded that they were a serious threat to the existing stocks (Mpoame and Rinne 1983, Flagg 1982).

Several researchers have observed predation of razorback sucker eggs and larvae by carp, channel catfish, smallmouth bass (*Micropterus dolomieui*), largemouth bass, bluegill, green sunfish, and redear sunfish (*Lepomis microlophus*) (Jonez and Sumner 1954, Ulmer 1980, Langhorst 1989, Marsh and Langhorst 1988). Other researchers hypothesized that predation is a major cause underlying the lack of recruitment to the adult razorback sucker population throughout the basin (McAda and Wydoski 1980, Minckley 1983, Tyus 1987a). Loudermilk (1985) observed that young razorback sucker Larvae inhabited the upper water column for the first few days after swim-up and exhibited no defensive behavior from potential predators. Marsh and Langhorst (1988) found larval razorback suckers in Lake Mohave survived longer and grew larger in the absence of predators. Marsh and Brooks (1989) demonstrated that channel catfish and flathead catfish were major predators of razorback suckers stocked into the Gila River. They concluded that predation by these fish had potential to result in total loss of those stocks. Langhorst (1989) reported channel catfish and largemouth bass predation on juvenile razorback suckers averaging 171 mm (6.7 in.) total length stocked in isolated coves along the Colorado River in California. Two additional predaceous species, the walleye (*Stizostedion vitreum*) and northern pike (*Esox lucius*) have recently become prominent inhabitants of the Green River (Tyus and Beard 1990).

Though nonnative fish species were and are introduced by man, the ability of these nonnative fish to survive and become established in the Colorado River basin is, in part, due to the alteration of natural riverine habitat described under Factor A. Alteration of historic flow regimes and construction of reservoirs has created favorable conditions for some nonnative fishes (Seethaler 1978, McAda and Keading 1989, Minckley 1983). Thus the threat of predation is, to some extent, associated with habitat modification.

D. The Inadequacy of Existing Regulatory Mechanisms

As discussed in Factors A and C, the razorback sucker has declined substantially in the past 80 years because of major alterations in its

habitat, dissection of the river system with dams, and the introduction of many new species to the ecosystem. Although the razorback sucker has been included on the protected list of all Colorado basin States, except Wyoming (where they are extirpated) and New Mexico (though evidence suggests the species was probably historically native to the State, no specimen-substantiated records of razorback sucker exist in New Mexico) (Minckley *et al.* in press), it has continued to decline. It is presently one of the most endangered fishes in the Colorado River basin (Minckley 1983, Tyus 1987a).

Most State regulations protect the razorback sucker from take and possession. They do not, however, address the major problems of habitat destruction or the introduction of competitive and predaceous species. All States prohibit transportation and stocking of any fish species without prior consent of the respective State agencies. State agencies do, however, introduce new species which may compete with or prey upon the endangered Colorado River fishes. The Service has an informal agreement with the State of Colorado to review all stocking proposals in the Colorado River within Colorado. The Service is attempting to develop a similar arrangement with the State of Utah. However, Service agreements with other States with habitats occupied by razorback sucker have not been formulated. The Service can, to some extent, influence State stocking actions by withholding Federal funds or fish from Federal hatcheries for stocking proposals with potential to adversely impact the razorback sucker.

State water quality and streamflow regulations do not assign stringent criteria to waters inhabited by the razorback sucker. Regulations permit desilting and cooling because such water quality changes are generally deemed beneficial. However, the razorback sucker and other native fish species are adapted to the Colorado River's highly turbid, turbulent, and warm conditions. Most Federal regulations also consider water clarity, low temperatures, and "purity" desirable water quality standards, and they assign criteria that enhance or preserve these conditions even though they may not provide the best conditions for native ecosystems. Water discharges associated with development, such as oil and gas, may not have adequate regulations to assure that water quality standards are met.

The presence of any one or all of the other listed Colorado River fishes in the same reaches as the razorback sucker does not necessarily lend adequate protection to the razorback sucker because its life history and habitat requirements are different than those of the other species (Tyus and Karp 1989). Although Federal Agencies are mandated to consider the other listed fishes relative to their actions, they were not mandated to do so for the razorback sucker. Therefore, unless the razorback sucker is listed, Federal Agencies may take actions and implement programs which avoid jeopardy to other endangered fishes while adversely affecting the razorback sucker.

The Recovery Implementation Program has a goal of managing the razorback sucker so that it does not need the protection of the Endangered Species Act. The management goal adopted by the Recovery Implementation Program for the razorback sucker is to establish and protect self-sustaining populations and natural habitat. Substantial funds and resources have been provided by the Recovery Implementation Program to meet the goals for this and other listed Colorado River fishes. Although actions by the Recovery Implementation Program will provide benefits to the razorback sucker, these actions alone do not provide permanent protection because the Recovery Implementation Program is not a regulatory mechanism. Instead, it is a cooperative effort agreed to by public and private entities that have an interest in how the Upper Colorado River Basin and its resources are managed. The Cooperative Agreement that binds these parties may be amended or terminated by agreement of the parties, or any party may withdraw upon written notice. Section 7 of the Act requires that all Federal Agencies insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any threatened or endangered species. The Recovery Implementation Program does not have the force and effect of law to mandate that the effect of any Federal action on the razorback sucker be considered. And finally, the Recovery Implementation Program only applies to the upper basin (excluding the San Juan River), and therefore does not protect the species throughout its range.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Of great concern is the fact that significant recruitment of young fish to these populations has not been evident for at least 30 years. There is considerable evidence that existing populations are composed primarily of old individuals that are slowly dying off (McCarthy and Minckley 1987, Tyus 1987a). Only a few naturally reproduced juveniles have been reported from Lake Mohave, the Colorado River, and off-stream canal systems downstream of Lake Mohave (Marsh and Minckley 1989) and from the Green River (Holden 1978) in the past 15 years.

The introduction and establishment of nonnative fish species into the Colorado River system is believed by many researchers to have negatively impacted the razorback sucker. Tyus *et al.* (1982) recorded 42 species that have become established in the upper Colorado River basin, and Minckley (1979) listed 37 nonnative species in the lower basin. Many of these may be innocuous or inhabit areas not occupied by razorback suckers but several are considered serious competitors or predators (Minckley 1983, Loudermilk 1985). In addition to direct predation (see Factor C), competition may result in negative impacts to the razorback sucker, but impacts from competition are more difficult to detect than predation impacts. Although these interactions are not fully understood, nonnative fish species are hypothesized to impact the razorback sucker due to their considerable numbers, the sharing of common foods, and occupation of the same habitats (Jonez and Sumner 1954).

The threat of competition continues as nonnative species continue to be introduced and their ranges continue to expand. The triploid grass carp (*Ctenopharyngodon idella*) has been legalized for importation into California and Arizona. In the lower basin, two tilapia species (*Tilapia* spp.) have become established, and, along with the flathead catfish, have become the dominant fish species in the lower Colorado River (W.L. Minckley, Arizona State University, pers. comm. 1989). The rainbow smelt (*Osmerus mordax*) recently has been proposed for introduction into Lake Powell (Gustaveson et al. 1990).

Marsh and Langhorst (1988) studied food availability and consumption by larval razorback suckers in Lake Mohave and found that larval razorback suckers consumed a variety of the zooplankters available in the area. Papoulias (1986) found, under experimental conditions, that food items needed to be present at a density of 10 organisms per liter within 10 days of absorption of the yolk sac. Death occurred at about 20–30 days of age if insufficient numbers of zooplankton were present. Marsh and Langhorst's (1988) research on Lake Mohave showed an average of 1.5 zooplankters per liter,

and they reported the disappearance of larvae at about 20 days of age. Papoulias' (1986) results indicate low availability of food organisms may explain the absence of fishes greater than 10.6 mm (0.4 in.) in Lake Mohave. However, Marsh and Langhorst (1988) report that low availability of larval foods does not account for the apparent total mortality of larvae in Lake Mohave.

Intercrossing between razorback suckers and flannelmouth suckers (*Catostomus latipinnis*) was first reported by Hubbs and Miller (1953). Vanicek et al. (1970) and Holden (1973) reported a high incidence of intercrossing between razorback and flannelmouth suckers in the upper basin. They found ratios of 16 intercrosses to 73 razorback suckers and 40 intercrosses to 53 razorback suckers, respectively. McAda and Wydoski (1980) reported 8 razorback sucker x flannelmouth sucker intercrosses collected with 95 razorback suckers in the upper basin. All of the above reports of intercrossing were based on an examination of morphological characteristics. The reports of intercrossing are suggestive, but not conclusive, evidence that intercrossing may be a threat to the species. Therefore, until additional scientific data are gathered, it is premature to conclude that intercrossing is a significant threat to the species. Recent electrophoretic analyses of Lake Mohave razorback suckers revealed less than a 5 percent incidence of flannelmouth sucker genes, and Buth et al. (1987) considered this level of introgression to be insignificant.

A pre-impoundment poisoning project in the Green River where Flaming Gorge Reservoir is now located is often cited as at least a partial cause for the loss of native fishes immediately downstream of the reservoir. While many razorback suckers were undoubtedly lost, a comparison of fish species composition in Dinosaur National Monument before and after the program (Binns et al. 1963, Vanicek and Kramer 1969, Vanicek et al. 1970) supports the premise that the effect of the poisoning was short term and not responsible for the current status of the razorback sucker. A similar pre-impoundment study and treatment program was conducted on the San Juan River in New Mexico where Navajo Reservoir is located. No razorback suckers were collected before or after the treatment program (Platania 1990).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the razorback sucker in determining to make this rule final. Based on this evaluation, the preferred action is to list the razorback sucker as endangered. Endangered status, which means that the species is in danger of extinction throughout all or a significant portion of its range, is appropriate for the razorback sucker because of its greatly reduced range, the extensive partitioning of its range by dams, the extensive alteration of its natural habitats through impoundment and altered flow and temperature regimes, its apparent inability to recruit successfully in the wild, and the introduction of nonnative fish species. A decision to take no action would constitute failure to properly classify the razorback sucker pursuant to the Act and would exclude the razorback sucker from protection provided by the Act. A decision to determine threatened status, which means the species is likely to become endangered within the foreseeable future, would not adequately reflect the status of the razorback sucker. The small number of old fish that currently represent the virtually nonrecruiting population indicate the razorback sucker is in danger of extinction throughout its range. Critical habitat is not being proposed for the reasons stated below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. In the proposed rule, the Service indicated that the designation of critical habitat was not determinable or prudent at that time for the razorback sucker. However, several commenters responding to the proposed rule recommended that critical habitat be designated. Another development since the proposed rule was published was a court decision (*Northern Spotted Owl* v. *Lujan*) regarding the designation of critical habitat for the spotted owl. That decision has caused the Service to scrutinize its critical habitat findings more closely. The Service finds that critical habitat for the razorback sucker is not presently determinable. The Service will reexamine the question of whether critical habitat designation is prudent during the period that the Service is attempting to determine critical habitat.

Critical habitat is defined in section 3(5)(A) of the Act as the specific areas within the geographical area currently occupied by a species on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection. Provisions also are included for designating critical habitat outside areas currently occupied. Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic and other relevant impacts of specifying any particular area as critical habitat (Section 4(b)(2)).

The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Though it is likely that there are areas very important to the razorback sucker, we are unable to adequately determine at this time the precise constituent elements within specific areas that are essential to its survival and recovery. As noted earlier, there is limited information on the specific habitat needs of the razorback sucker. Though habitat occupied by the razorback sucker has been identified and spawning has been documented in several areas, it is questionable as to whether these areas are adequately meeting the life history needs of the razorback if there has been little or no recruitment. The razorback sucker cannot perpetuate itself in the wild if there is little or no recruitment to the adult population. It would not be in the best interest of the species to identify or use the characteristics of existing habitats as the basis for critical habitat when we are unable to identify those specific areas and precise habitat characteristics needed to bring about recruitment. Hence, the Service finds that critical habitat is not determinable at this time.

Section 4(b)(6)(C) further indicates that a concurrent critical habitat determination is not required, and that the final decision on designation may be postponed for 1 additional year from the date of publication of the proposed rule, if the Service finds that a prompt determination of endangered or threatened status is essential to the conservation of the species involved. The Service considers that a prompt determination of endangered status for the razorback sucker is essential. As a proposed species, the razorback sucker would be eligible only for the limited consideration given under the conference requirement of section 7(a)(4) of the Act, as amended. This does not require a limitation on the commitment of resources on the part of

concerned Federal Agencies or applicants for Federal permits. Therefore, to ensure that the full benefits of Section 7 and other conservation measures under the Act will apply to the razorback sucker, prompt determination of endangered status is essential.

Pursuant to section 4(b)(6)(C)(ii) of the Act, as amended, it critical habitat is not determinable at the time of listing, within 2 years of the proposed rule the Secretary must designate critical habitat to the maximum extent prudent on the basis of whatever data are available at that time. That determination will be due for the razorback sucker on May 22, 1992.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing 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 taking and harm are discussed, in part, below.

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)(2) requires Federal Agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed 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.

The Green and Colorado Rivers have been extensively developed through several Federal programs for power generation, flood control, salinity control, and irrigation. As a result, many Federal Agencies are involved with activities which may affect the razorback sucker. Flow conditions in the Green and Colorado Rivers are influenced by power generation and flood control at several Bureau of Reclamation projects. Power generated by the Colorado River Storage Project reservoirs is marketed by the Western Area Power Administration, whose marketing program has considerable influence on discharges from those reservoirs. Other Bureau of Reclamation projects involving diversions and storage for irrigation or municipal and industrial uses and salinity control are in various stages of planning, construction, or operation. The Soil Conservation Service has salinity control programs which affect flows and water quality in the Colorado River system. The Corps of Engineers would consider the razorback sucker in their administration of Section 404 of the Clean Water Act, and the Environmental Protection Agency also would consider the fish in administration of the Clean Water Act, the National Environmental Policy Act, and other pollution and pesticide control programs. Several Federal land and resource management agencies including the National Park Service, the U.S. Forest Service, and the Bureau of Land Management would have to consider the needs of the razorback sucker in programs under their jurisdiction.

The interagency Recovery Implementation Program coordinates the recovery of currently listed species (Colorado squawfish, humpback chub, and bonytail chub) and the management of the razorback sucker in the upper basin, excluding the San Juan River. The Recovery Implementation Program considers the razorback sucker an imperiled species that may require listing in the future unless actions are taken to reverse its downward population trend. Listing the razorback sucker as endangered will give it equal status with the other three listed species in the Recovery Implementation Program's recovery efforts.

Listing the razorback sucker as endangered would influence the stocking of nonnative fish species and the management of recreational sportfishing in a similar manner as the other three listed fish species in the Colorado River basin. If a stocking or sportfishing program involved Federal funds or permits, or received fish from Federal hatcheries, the action would be reviewed under section 7 of the Act. In addition, control of nonnative fishes is an element of the Recovery Implementation Program. This program would confine stocking of nonnative fishes to areas where no conflict with endangered fishes can be demonstrated. When feasible and effective, nonnative fishes would be selectively removed from areas considered essential to recovery of the listed species.

Participants in the Recovery Implementation Program also would review State sportfishing practices and regulations for compliance with Federal law and impacts on endangered fish species. As noted previously, the Service has an informal agreement with the State of Colorado to review all stocking proposals, and is seeking a similar arrangement with the State of Utah.

The Act, and its implementing regulations in 50 CFR 17.21, set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. With respect to the razorback sucker, it is anticipated that few, if any, trade permits would ever be sought or issued, since the species is not in trade or common in the wild. Requests for copies of the regulations on animals and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 N. Fairfax Drive, Arlington, Virginia 22203, (703) 358–2093; FTS 921–2093.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, 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).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Service's Utah Field Office (see **ADDRESSES** above).

Authors

This rule was prepared by P.A. Schrader, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT** above), with assistance from D.L. Archer, formerly with the U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

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

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 § 17.11(h) by adding the following, in alphabetical order under "FISHES," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
FISHES							
*	*	*	*	*	*	*	
Sucker, razorback	*Xyrauchen texanus*	U.S.A. (AZ, CA, CO, NM, NV, UT, WY), Mexico.	Entire	E	447	NA	NA
*	*	*	*	*	*	*	

Dated: October 15, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–25471 Filed 10–22–91; 8:45 am]

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federal register

Wednesday
October 23 1991

Part V

Department of Agriculture

Farmers Home Administration

7 CFR Parts 1900 and 1951

Farmer Program Account Servicing Policies for Section 1816 and Other Related Sections for the "1990 FACT ACT" and Availability of Loan Servicing Programs for Delinquent Farm Borrowers; Proposed Rules

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1900 and 1951

Farmer Program Account Servicing Policies for Section 1816 and Other Related Sections for the "1990 FACT ACT"

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624), hereafter called the FACT ACT enacted on November 28, 1990, amended certain provisions of the Consolidated Farm and Rural Development Act (CONACT) that provided unintended benefits to delinquent Farmer Program (FP) borrowers. This proposed action is being taken to amend Farmers Home Administration (FmHA) regulations to incorporate many of the changes provided for in the FACT ACT.

DATES: Comments must be received on or before November 22, 1991.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations, Analysis and Control Branch (RACB) of the Farmers Home Administration, USDA, room 6348, South Agricultural Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address. Public reporting burden for this collection of information is estimated to average five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0133), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A. Veldon Hall, Director, Loan Servicing and Property Management Division, Farmer Programs, Farmers Home Administration, USDA, room 5449, South Agricultural Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 447–4572.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Programs Affected

These changes affect the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans (Section 502 Rural Housing Loans)
10.416—Soil and Water Loans

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency loans, Farm Operating Loans, and Farm Ownership Loans are excluded, with the exception of nonfarm enterprise activity, from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Background

Discussion of Proposed Rule

The Agricultural Credit Act of 1987, Public Law 100–233, amended the CONACT to require major changes in the servicing and restructuring of Farmers Home Administration (FmHA) Farmer Program (FP) borrower's loans. These changes were implemented by an interim rule published in the **Federal Register** on September 14, 1988 (53 FR 35638–35798).

Section 1816 and other related sections of the FACT ACT amended certain provisions of the CONACT to close the loopholes and prevent unintended benefits of the Agricultural Credit Act of 1987. These amendments were made in an effort to reduce Government costs while still assisting many FP borrowers to remain on the farm or ranch.

To expedite the implementation of the various provisions of the FACT ACT, FmHA is publishing the revisions to its regulations in several separate issuances. Many of the provisions of this Act became effective on the date of enactment. The Notice of Debt Settlement was effective 120 days after the date of enactment of the Act in accordance with section 1861(b). FmHA is restricted from using many provisions of the existing published regulations and is unable to offer debt writedown on new applications submitted on or after November 28, 1990, until regulations are published. In order for FmHA to be able to assist FP delinquent farmers and issue regulations as soon as practicable as required by section 1861(e) of the FACT ACT, it is urgent that FmHA implement the necessary revisions to its regulations as soon as possible. Therefore, FmHA is only allowing a 30-day period for comments. Any further delays would be thwarting the Congressional intent and would cause further distress to farmers in need of FmHA assistance.

A discussion of the proposed amendments is as follows:

Part 1900—General

Subpart B—Adverse Decisions and Administrative Appeals

Proposed § 1900.53 and Exhibit B–2 of this subpart reference the applicant's right to negotiate appraisals involving farmer program servicing requests submitted on or after November 28, 1990. Sections 1900.53 and 1900.55 also will be revised to require that if an FP borrower elects to negotiate an FmHA appraisal in lieu of an appeal, the negotiated appraisal will be the final appraisal and will not be appealable. See discussion below under § 1951.909(i).

Proposed § 1900.55 also states that the random selection by lot by the County Committee for the purchase of suitable farm inventory property in accordance with § 1955.107 will not be appealable. Such selection is addressed in the proposed rule on providing assistance to

beginning farmers or ranchers published in the Federal Register on May 29, 1991 (56 FR 24143–24145). Random selection is required by section 1813(b) of the FACT ACT (CONACT § 335). It is not appealable because it is based on clear and objective legal requirements; there is no use of Agency discretion. This proposal is consistent with FmHA's current policy of distinguishing between appealable and nonappealable administrative decisions and the May 29, 1991, proposed rule.

While random selection is not appealable, the applicant for purchase of FP inventory farm property may appeal the County Committee's discretionary exclusion of the applicant from the priority category from which the successful applicant was chosen. If the appellant wins on appeal, a new selection will be made according to proposed § 1955.107 (May 29, 1991, proposed rule discussed above). These changes are made by proposed § 1900.57(n). Section 1900.57(m)(3) will be deleted accordingly since appeals arising out of County Committee selection for purchase of suitable farm property will no longer result in multi-party appeals.

The Agency also proposes to add to § 1900.59 that State Directors' and appeal officers' decisions will be implemented within a reasonable period. This change is required by section 1812 of the FACT ACT (CONACT section 333B(e)). It should reduce unnecessary delays in implementing final appeal decisions.

Part 1951—Servicing and Collections

Subpart S—Farmers Programs Account Servicing Policies

Due to the great number of revisions, the Agency is publishing the complete regulation for convenience and readability. Proposed substantive changes will be discussed in order by section. Necessary editorial and administrative changes and clarifications being proposed will not be discussed.

Applications submitted for servicing under this subpart before November 28, 1990, will continue to be processed in accordance with the existing published regulations. The reason for this policy is based on section 1861(c) of the FACT ACT which states that most of the provisions contained in section 1816 of the FACT ACT, including appraisal negotiation, nonessential assets, one-time writedown or buyout, and $300,000 lifetime debt forgiveness limitation, apply only to applications submitted on or after November 28, 1990.

Section 1951.901 is being amended to add a reference to debt settlement under subpart B of part 1956 of this chapter. Section 1807 of the FACT ACT (CONACT section 331D) requires FmHA's notice to borrowers who are 180 days delinquent to include a summary of FmHA's debt settlement program. Section 1951.901 also is being revised to add a reference to the definitions for primary and preservation loan service programs and debt settlement. The summary of the exhibits of this subpart is being removed as unneeded.

Section 1951.902 also is being amended to add a reference to debt settlement under subpart B of part 1956 of this chapter. Section 1807 of the FACT ACT (CONACT section 331D) requires that the Agency notify borrowers at least 180 days delinquent of the Agency's debt settlement program. A new policy is being added to this section to implement section 1816(o) of the FACT ACT (CONACT section 353(o)). This policy is that FmHA will not reduce or terminate any part of a borrower's debt that could be paid by liquidating or borrowing against theequity in certain nonessential assets of the borrower unencumbered by FmHA. FmHA's policy on considering nonessential assets is discussed under § 1951.910 of this subpart. Section 1951.902 also is being revised to simplify the description of FmHA policies for notifying and servicing delinquent or financially distressed FP borrowers. A reference to the governing sections for primary and preservation loan service programs and debt settlement are being added. The summary of the various phases of loan servicing is being removed as unneeded. Attachment 1 of Exhibit A of this subpart already provides a summary of the servicing options under this subpart, and other sections within this subpart provide the specific details.

Section 1951.903 proposed revisions are to add a reference to the debt settlement programs governed by subpart B of part 1956 of this chapter. Section 1807 of the FACT ACT (CONACT section 331D)) requires that the Agency notify borrowers at least 180 days delinquent of the Agency's debt settlement program. The contents or processing of debt settlement applications is not being changed.

Section 1951.906 proposed revisions are to add and revise the following definitions for this subpart:

Borrower

"The proposed revision broadens the definition of borrower to include all parties liable for the debt. This change was made to implement FmHA's policy of not writing down or terminating any debt which could be paid by any party legally obligated to pay the debt. This definition also is being clarified to clearly state FmHA's present policy of not considering nonprogram (NP) borrowers as borrowers eligible for servicing under this subpart.

Debt Settlement

This definition will be added since the borrower is now notified about the debt settlement program pursuant to section 1807 of the FACT ACT (CONACT section 331D).

Farmer Program (FP) Loans

This definition has been revised to reflect the definition of "farmer program loan" found in section 1814 of the FACT ACT (CONACT section 343(a)(10)). It deletes mention of Special Livestock loans because they are not mentioned in the statutory definition and there are no more such loans outstanding.

Feasible Plan

This definition is being revised to state that borrower records supporting the operating plan now must include the borrowers' income tax records. This change is being made because FmHA has found that some borrowers have very few actual financial records. Income tax records are a reliable source of actual records and an excellent source of verifying financial information. Other agencies and OMB guidelines support the use of income tax returns in Agency credit analyses. The Agency recognizes the confidential nature of the documents and, therefore, proposes to return the documents to the borrower upon completing its processing of the borrower's servicing application. Requiring five years of records is consistent with the loanmaking and planning requirements contained in other FmHA regulations such as § 1910.4(b) of subpart A of part 1910, § 1924.57(d) of subpart B of part 1924 and § 1945.163(a) of subpart D of part 1945 of this chapter. Five years of records are necessary to assess accurately future income because crop failures, disease, and natural disasters can severely affect yields and income in a year. Also, some products vary widely in price during the season and/or year.

The definition of feasible plan also is being revised to state that the borrower now must meet up to a 105 percent but not less than 100 percent of the

scheduled payments for all debts, except as provided in § 1941.14 of subpart A of part 1941 of this chapter. This change is based on Section 1816(c) of the FACT ACT (CONACT section 353(c)(3)) which states that FmHA will assume that a borrower needs up to 105 percent of debt obligations in order to meet the obligations and continue farming. Legislative history of the section further indicates that this provision was not intended to prohibit a borrower from receiving debt restructuring merely because projected income does not allow the 105 percent margin.

Good Faith

This definition is being added to incorporate the description of good faith currently found in § 1951.909(c)(2) of this subpart. Several additions are being made, however, to implement the certain provisions of the FACT ACT. Section 1816(h) of the FACT ACT (CONACT section 353(m)) states that a borrower will not be considered to have acted without good faith to the extent of an unauthorized disposition of normal income security before October 14, 1988, if the borrower shows that the proceeds from the disposition were used to pay essential household and farm operating expenses for which the borrower would have been entitled to a release under FmHA regulations. The proposed definition also states that the good faith requirement now applies to net recovery buyout and leaseback/buyback. Section 1816(f) of the FACT ACT (CONACT section 353(c)(6)) extends the good faith requirement to net recovery buyouts. Section 1951.909(h)(4) of this proposed rule contains the Agency's proposal to require borrowers purchasing their property at net recovery value to have acted in good faith. Section 1816(e) of the FACT ACT (CONACT section 335(e)(1)) extends the good faith eligibility requirement to the leaseback/buyback program. The Agency published an interim final rule March 18, 1991, (56 FR 11350) regarding the good faith requirement for leaseback/buyback. This proposed rule contains the interim rule provisions in § 1951.911(a)(4).

New Application

This definition will be added as certain debt restructuring and loan servicing provisions of the FACT ACT only apply to applications submitted on or after November 28, 1990, the date of enactment of the law. The definition is based on section 1861(c)(2) of the FACT ACT which defines "new application."

Nonessential Assets

This definition will be added as Section 1816 of the FACT ACT (CONACT section 353) now requires FmHA to consider during restructuring certain assets that the borrower has an interest in but FmHA does not have a lien on. FmHA's policy on nonessential assets is discussed further under § 1951.910 of this subpart.

Section 1951.907 will be revised by removing paragraphs (a) and (b) as the notification of the borrowers described in these paragraphs is now complete. The remaining section will be revised to change the time period from 45 days to 60 days for the borrower to respond to the notices for Primary and Preservation Loan Service and Debt Settlement programs in accordance with section 1807 of the FACT ACT (CONACT section 331D). Since the law now allows a borrower 60 days to respond to the notice, FmHA will require a complete application to be submitted with the request so FmHA can respond promptly to the request. The rule of reason will no longer apply.

Section 1951.907 is being amended further to consolidate provisions concerning bankruptcy. This section also will be changed to state that notification of borrowers in bankruptcy will be in accordance with instructions from the Regional Office of the General Counsel (OGC) as bankruptcy practices vary widely between bankruptcy courts.

The Agency also is proposing to amend § 1951.907 to provide that the borrower must furnish in the application available income tax records as part of the borrower's actual records. This proposed change is discussed above under the definition of "feasible plan." The debt settlement application also will be included with the forms sent to the borrower. This proposal is based on section 1807 of the FACT ACT (CONACT section 331D) which requires FmHA to notify the borrower 180 days delinquent of debt settlement programs. A reference to debt settlement regulations also will be added to this section to make clear that requests for debt settlement alone may still be made pursuant to Subpart B of part 1956 of this chapter.

Section 1951.909 is being changed throughout to recognize statutory time changes. FmHA will now have 90 days instead of 60 days to make a decision on requests for Primary Loan Servicing. This change is required by section 1816(d) of the FACT ACT (CONACT section 353(c)(4)). Borrowers will have 90 days instead of 45 days to buyout their FmHA loans at net recovery value. This proposed change is in response to section 1816(f)(6) of the FACT ACT (CONACT section 353(c)(6)).

Several references to debt settlement have been made throughout § 1951.909 in order to implement section 1807 of the FACT ACT (CONACT sec. 331D). Debt settlement programs, however, will not be used to supplement or supplant the writedown program. Debt settlement is not a servicing program; it is for the settlement of the total FmHA debt. The use of debt settlement with writedown or writeoff of debt would circumvent the maximum $300,000 limit set by law and provide a borrower an unintended benefit at the expense of the Government and the taxpayer.

References to Exhibit J, the Debt and Loan Restructuring System (DALR$), in § 1951.909 are being changed to also refer to Exhibit J–1 of this subpart. Calculations for new applications for the Primary Loan Service Program and buyout will be in accordance with Exhibit J–1. It is not feasible to revise the DALR$ computer program and Exhibit J–1 until the regulations for this subpart are finalized; therefore, Exhibit J–1 is not being published as part of this proposed rule. The computer program and the exhibit, however, will be changed in the final rule to meet the additional requirements of the FACT ACT and to incorporate the regulatory changes adopted after this notice and comment period. Other new exhibits and attachments are referenced in § 1951.909 but are discussed below following the discussion of textual changes.

Section 1951.909(b) is being revised to state that if primary loan servicing is not feasible and the borrower does not buyout the FmHA loans at the net recovery value, then the borrower may be considered for Preservation Loan Service Programs and the Debt Settlement Programs at the same time. The borrower must have submitted an application for debt settlement to be considered for debt settlement programs. In addition, if an appeal has been requested, it must be completed and FmHA's adverse determination must be upheld before Preservation Loan Service and Debt Settlement Programs are considered. A similar change will be added under paragraph (i) of this section concerning appeals. The joint consideration of Preservation Loan Service and Debt Settlement Programs will reduce delays and allow the consolidated appeals of both programs if the borrower should be denied both programs. This also will provide the borrower a better opportunity for being successful with the leaseback/buyback program and/or the

homestead protection program since the existing FmHA debt can be simultaneously settled. FmHA proposes to revise §§ 1951.909(b)(2) and 1951.909(i)(2) to assure that borrowers are timely advised of their appeal rights concerning any denial of a preservation loan servicing and/or debt settlement request. These proposed changes and those to § 1951.911 clarify that acceleration and foreclosure can proceed after the exhaustion of appeals concerning a primary loan servicing request, and any preservation loan servicing and/or debt settlement request which was timely filed as part of the primary loan servicing application.

Additional eligibility requirements will be added to § 1951.909(c) for processing "new applications." The maximum lifetime limit for either writedown or writeoff (with net recovery buyout) under this subpart will be a maximum of $300,000 principal and interest per borrower. This proposed change is necessitated by section 1816(h) of the FACT ACT (CONACT section 353(p)). A borrower submitting a new application also will only be able to obtain either one writedown or one buyout for loans made after January 6, 1988 (the effective date of the Agricultural Credit Act of 1987). If loans made prior to this date have been restructured and/or written down, then the borrower may receive one more writedown or a writeoff. This change is mandated by section 1816(h) of the FACT ACT (CONACT section 353(n)). FmHA has considered making denials of restructuring on these bases nonappealable given the objective nature of the administrative decisions. The Agency has decided, however, that it will grant appeal rights on these issues to guard against errors in implementing the new and somewhat confusing statutory provisions. If implementation of these provisions proves, in practice, not to be problematic, then FmHA will revise its regulations to make such denials nonappealable.

References will be made throughout § 1951.909 to proposed § 1951.910 dealing with FmHA's required consideration of the borrower's unencumbered assets in determining eligibility for loan servicing. FmHA's policy on the borrower's other assets is discussed below with regard to § 1951.910.

Section 1951.909(e) is being changed throughout to state that when considering a new application for primary loan servicing any outstanding interest on a loan will be added to the principal if the loan requires servicing. This change is allowed by section 1805(b) of the FACT ACT which deleted the prohibition in CONACT section 331(h) of FmHA's charging interest on interest not more than 90 days overdue. The Agency realizes that all outstanding interest now can be added to principal regardless of the date of application, but has decided for administrative convenience that it will continue to process applications submitted before November 28, 1990, under existing rules. Interest provisions in this section also are being revised to clarify that protective advances, which may be added to loan principal and scheduled over the remaining loan term, do not include the payment of prior or junior liens. This revision is consistent with current FmHA policy.

The special debt set-aside provision under paragraph (e) of § 1951.909 also is being removed as it is no longer needed. This provision was not available after September 30, 1985, and the five-year deferment under the provision has now ended. This paragraph also is being revised to make Soil and Water (SW) loans eligible for limited resource interest rates in conjunction with primary loan servicing. Limited resource authorization for making SW loans was given by section 1802(b) of the FACT ACT (CONACT section 310D(a)). FmHA incorporates all CONACT interest rate reduction programs for loan-making into its primary loan servicing program FP loans. This will assist the borrower in developing a better cashflow with restructuring.

Section 1951.909(f) is being revised so that on new applications, FmHA can consider the value of security no longer in the borrower's possession when calculating the net recovery value of the FmHA security. This proposed change is required by section 1816(b)(2) of the FACT ACT (CONACT section 353(c)(2)). In determining the value of such property, FmHA will base its determination on such sources of information as the publications' Hotline (Farm Equipment Guide), and Official Guide (Tractor and Farm Equipment), sale prices at local public auctions, public livestock sale barn prices, comparable real estate sales, etc. This paragraph is being further revised to clarify the meaning of collateral for purposes of calculating net recovery value. Items for collateral will include such items as bank accounts, stocks, bonds, etc., if they are pledged to and/or in the possession of FmHA. Other than such specified items as stocks or bonds, intangible property, such as good will, will no longer be included as it is very difficult to establish a value for such property.

Section 1951.909(h)(3) is being changed to clarify when FmHA is required to meet with a borrower's undersecured creditors in States which do not have FmHA certified mediation programs. The proposed revision requires FmHA to hold a meeting only if there are undersecured creditors holding a substantial part of the borrower's total debt. "Substantial part of the borrower's total debt" will be defined in the negative stating that FmHA will not be required to meet with the undersecured creditors when the borrower could not develop a feasible plan even if the total undersecured debt is written down to zero. The Agency believes that this standard is consistent with the statutory purposes of encouraging restructuring whenever it would benefit the Government's net return on the loan, and encouraging other creditors to participate if such participation would enable the borrower to develop a feasible plan.

Section 1951.909(h)(4) is being changed to incorporate all notification and processing rules for net recovery buyout. The proposed revision states that FmHA will not provide any insured or guaranteed credit for a buyout. This change clarifies existing Agency policy at § 1951.909(h)(3)(iii) for not providing credit for buyouts. In addition, borrowers must have acted in good faith to be eligible for buyout. The term of the New Recovery Buyout Recapture Agreement (Exhibit C–1) will be for 10 years instead of 2 years. The amount of recapture will be the difference between the net recovery value of the loan on the date of the agreement and the fair market value at the time of sale or conveyance (instead of the date of the agreement). Recapture, however, still will never exceed the amount of FmHA debt written off. The transfer of the property to a spouse or child who is actively engaged in farming the property will not be considered a sale or conveyance under the agreement. These proposed changes are required by section 1816(f)(6) of the FACT ACT (CONACT section 353(c)(6)).

Section 1951.909(i) is being amended to allow a borrower who submitted a new application to negotiate the appraisal in lieu of appeal if the borrower disagrees with the (first) FmHA appraisal for FP loans. Section 1816 of the FACT ACT (CONACT section 353(c)(7)) requires negotiations of appraisals at the request of a borrower based on the borrower's (second) independent appraisal. The borrower will have 30 days after requesting negotiation to provide FmHA a copy of the borrower's appraisal.

FmHA will provide the borrower a list of independent appraisers upon request; however, the independent appraiser need not be chosen from FmHA's list. The independent appraiser, nevertheless, must meet certain qualifications set out in the proposed regulation. The statute further requires that a third appraisal be conducted with the cost shared equally by the FmHA and the borrower. The statute also mandates that the average of the two appraisals closest in value "shall become the final appraisal." This indicates that the negotiated appraisal should not be appealable. Therefore, it is proposed that the borrower have the option of using the appeals process to dispute the FmHA appraisal only if the borrower and FmHA have not already negotiated a final appraisal. This policy is consistent with the statutory purpose of preventing costly and time-consuming appeals through early negotiation. Also, consistent with this statutory purpose, the Agency is proposing to require that the negotiation of appraisals be completed before mediation or the meeting of creditors begins. Legislative history indicates that Congress specifically intended to change FmHA's policy of resolving appraisal disputes only after mediation has been completed. Such completion of the final negotiated appraisal prior to any negotiations with other creditors should reduce disputes over the value of the borrower's assets during mediation or the meeting of creditors.

In relation to the proposed negotiation of appraisals, the Agency would like to solicit comments on the following issue not addressed in the proposed rule. FmHA estimates that in as many as 30 percent of the cases, the borrower's appraisal and FmHA's appraisal will be fairly close in value. The cost of the third appraisal is to be paid equally by the borrower and FmHA. The fee for a qualified appraiser will likely increase with the implementation of the qualified appraiser requirements of Financial Institutions' Reform, Recovery and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331–3351) (discussed below). Therefore, it does not seem cost effective to obtain an independent appraiser to do a third appraisal where there is no real need. FmHA is considering whether it should agree to accept the borrower's independent appraisal in some cases, but allow the borrower the option of proceeding with negotiation using a third appraisal. One alternative is to allow the County Supervisor to accept the borrower's appraisal if it is within a particular percentage (*e.g.* 10 percent) of the FmHA appraisal. FmHA then would notify the borrower in writing of FmHA's willingness to accept the borrower's appraisal of the property. FmHA would enclose a copy of the FmHA appraisal so that the borrower could compare the two. The borrower would be informed in the notice that the borrower has the option of proceeding with the negotiation of the appraisal. FmHA does not believe that such an approach would violate the statutory provision authorizing negotiation of appraisals. This proposal is consistent with the legislative intent of early resolution of disputes on property valuation and prevention of costly, time-consuming appeals.

The Agency is proposing to amend § 1951.909(i) further to require, in those States that have implemented the FIRREA, that appraisals of FmHA security be made by qualified appraisers who comply with the provisions of FIRREA. It is proposed that appraisal reports be made in accordance with Sections I and II of the Uniform Standards of Professional Appraisal Practices. FIRREA was enacted to standardize and improve the quality of real estate appraisals used in federally related transactions. Many States have or are in the process of implementing FIRREA. This is affecting many financial institutions that do business with FmHA and its borrowers. In the Agency's experience, there has been no uniformity in the methods for conducting real estate appraisals. It has been very difficult to compare separate appraisals of the same farm tract completed by different appraisers. The separate appraisals often will greatly vary on the appraised value of the farm tract. Resulting disputes over the farm's value are difficult to resolve objectively due to the lack of uniformity in appraisal methods and appraiser qualifications. The new procedure for negotiating appraisals as discussed above will require comparisons of appraisals and the averaging of the two closest in value to arrive at the final negotiated appraisal. Uniformity and standardization is needed to arrive at fair and reasonable values of property. This proposal, therefore, is being taken to improve the quality of appraisals used in servicing FP loans.

If the borrower does not elect to negotiate as provided in section 353(c)(7) of the CONACT, the borrower has the right to appeal the appraisal as provided in section 353(j) of the CONACT. This provision states that an appeal may include a borrower's request for an independent appraisal of any property securing the loan. Under the statute when the borrower makes a request, FmHA must provide the borrower with a list of qualified appraisers, and the borrower must select the appraiser and pay for the appraisal. FmHA must consider the independent appraisal in any final determination concerning the loan. FmHA has attempted to reconcile the two statutory provisions. We believe it is consistent with the statute as a whole to offer negotiation first, but allow the borrower to select an independent appraisal as part of the negotiation process since that process requires the borrower to have his or her own independent appraisal. FmHA will thus assist the borrower by providing list of qualified appraisers. In the negotiation notice, FmHA will also inform the borrower that a negotiated appraisal is not appealable, and that appeal rights will be offered in a later notice. The appeal notice will be sent after borrowers are informed about any nonessential assets and after mediation or a meeting of creditors. However, negotiated appraisals cannot be the subject of any appeal.

In paragraph (a) of the proposed § 1951.910 borrowers who have nonessential assets sufficient to bring their FmHA account current are not eligible for any writedown or writeoff of any of the FmHA debt. This prohibition implements section 1816(a) of the FACT ACT (CONACT section 353(b)(1)). The proposed definition of nonessential assets contained in § 1951.906 includes the following assets which FmHA does not have a lien on, and which the borrower has an ownership interest in: (1) Assets which do not contribute a net income to pay essential family living expenses or to maintain a sound farming operation in accordance with existing § 1962.17 of subpart A of part 1962, and (2) assets which are not exempt from judgment creditors or exempt under bankruptcy law as described in a State Supplement by the State Director with guidance from the Office of the General Counsel. This definition implements the statutory language concerning nonessential assets in Section 1816(b)(1) of the FACT ACT (CONACT sec. 353(c)(2)(A)).

FmHA proposes to add the value of certain nonessential assets to the net recovery value of the security when it makes the determination that the borrower has nonessential assets. FmHA is required to add in this value under section 1816(b) of the FACT ACT (CONACT sec. 353(c)(2)(A)). The Agency has chosen to apply this provision first before Sections 1816(a) (CONACT sec. 353(B)(1)) and 1816(h)

(CONACT sec. 353(o)) of the FACT ACT. The latter two provisions require the borrower to liquidate nonessential assets by sale or borrowing against its value, if the loan value is greater than the liquidation value. This method of applying these provisions will assure that FmHA will be able to meet its statutory obligation to inform the borrower of its decision on restructuring and the calculations on which it is based within 90 days of receiving a restructuring request. Also, the Agency foresees that borrowers may not be able to timely liquidate the security because of market conditions and, in all likelihood will not be able to obtain a loan because of their financial situation. FmHA's proposed method takes these probabilities into account, yet gives the borrower the option of liquidating the nonessential asset. If the borrower thereafter pays FmHA the net recovery of the nonessential assets within the required time (see discussion below), then FmHA will recalculate the net recovery value deducting the value of the nonessential assets.

The net recovery value of the nonessential assets will be based on the market value of the property as determined by a current FmHA appraisal in accordance with FmHA regulations, less any prior liens and selling costs such as taxes due, commissions and advertising costs. Costs based on holding time in FmHA's inventory will not be included. FmHA does not have a lien on the nonessential assets; therefore, FmHA will not be taking the property into its inventory. FmHA will not make a calculation of the loan value of the nonessential asset because it believes that the loan value will never be greater than the net recovery value (NRV) for the following reasons:

1. FmHA is the lender of last resort.
2. The borrowers are delinquent and are having financial problems.
3. FmHA borrowers are unable to obtain sufficient credit elsewhere.
4. Commercial lenders will normally not make a loan in excess of the NRV of the collateral.
5. Lenders normally will only loan a percentage of the market value of the collateral. They usually consider such items as the cost of acquisition, inventory costs and disposing costs which would result in a loan value below the FmHA NRV.
6. It is very unlikely that borrowers considered under this section could obtain loans of greater value than the FmHA NRV.
7. It would be more difficult to develop a feasible plan with the additional loan payment.

To address the possible situation where FmHA calculates the NRV of nonessential assets in an amount which is different than the actual amount yielded in liquidating the assets, proposed § 1951.910 provides that the fair market value of the assets (*i.e.*, the sales price) will be used instead of the NRV. The sale, however, must be an arm's length transaction, so that the sales price will accurately represent the fair market value of the nonessential assets. The advantage of this policy to a borrower is that the borrower will not have to pay FmHA a greater estimated NRV if actual liquidation of the assets in good faith results in a smaller amount.

FmHA proposes to tell such borrowers that they have 90 days to pay their account current which they may do by selling the nonessential asset or borrowing against its value. This provision implements section 1816(h) of the FACT ACT (CONACT section 353(o)). FmHA will list each nonessential asset and its value on the notice, and give borrowers the opportunity to appeal both FmHA's classification of the asset as nonessential and its value. Borrowers could also elect to negotiate the value of the nonessential asset in accordance with § 1951.909 (i) discussed above. FmHA believes that the 90-day period is sufficient time to liquidate or borrow against the asset since Congress allowed a 90-day time period for borrowers to obtain financing when they wish to terminate their accounts with FmHA by purchasing their property for its net recovery value.

If the borrower's nonessential assets are not sufficient to bring the account current, the borrower will be notified that he or she has 45 days to pay FmHA the value of the nonessential assets, which a borrower could do by liquidating the asset or borrowing against its value. The 45-day time period will also allow FmHA to meet its statutory obligation to inform the borrower of its decision on restructuring and the calculation on which it is based within 90 days of receiving a restructuring request. These borrowers will receive the same information and have the same options as borrowers who can pay their account current except that they will be informed that they can request an appeal in a later notice.

In paragraph (b) of § 1951.910, FmHA proposes to require borrowers to provide a lien on certain essential assets. This proposal is consistent with FmHA's proposed loanmaking revisions published February 15, 1991 (56 FR 6315). This proposed rule stated that FmHA would take a lien on all assets of the borrower with exceptions for the following: Property which did not have a liquidation value; property that had a significant environmental problem; property which would consist of subsistence livestock; cash or cash collateral accounts to be used in the farming operation or as necessary living expenses; retirement accounts; household goods; small tools; and small equipment. A February 1989 GAO Report further recommended that FmHA take additional security at the time it serviced its loans. Based on the Agricultural Credit Act of 1987, FmHA did not believe it should require additional security for servicing. Recent statutory changes made by section 1816 of the FACT ACT which restrict the benefits of the Agricultural Credit Act, however, indicate that FmHA now has the discretion to require additional security. In this proposed rule the value of the additional security, however, will not be part of the net recovery value for purposes of calculating the borrower's first restructuring application. Rather, the additional lien will be taken at the time of closing the servicing action, and FmHA will consider its value in any subsequent servicing applications.

As discussed under the proposed definition of good faith in § 1951.906, FmHA has amended § 1951.911(a)(4) to require that borrowers receiving leaseback/buyback act in good faith.

The proposed rule change to § 1951.911(a)(5)(i) clarifies that a borrower can apply for preacquisition leaseback/buyback at any time, but that the application will not prevent FmHA's continued processing of the acceleration or foreclosure of the account. Borrowers previously had the opportunity to be considered for leaseback/buyback following any denial of primary loan servicing. The proposed rule requires a borrower to submit a completed Form FmHA 1955–1, the borrower's application to voluntarily convey the property to FmHA, when the preacquisition leaseback/buyback agreement or preacquisition homestead protection agreement is executed. These changes have been made to eliminate confusion about processing preacquisition preservation loan servicing applications and to streamline the preacquisition process. Requiring borrowers to execute the voluntary conveyance form along with the preacquisition leaseback/buyback and homestead protection agreements is necessary because preservation rights require FmHA to acquire the property, which FmHA can do only through a voluntary conveyance from the

borrower or by purchase at a foreclosure sale.

If FmHA cannot acquire the property through a voluntary conveyance because the property does not meet FmHA's longstanding requirements for acquisition contained in § 1955.10 of subpart A of part 1955 of this chapter, FmHA will proceed with acceleration and foreclosure. The borrower's request for preacquisition preservation loan servicing will also be denied, and the borrower will have the opportunity to appeal this decision. Such appeal will not delay acceleration and foreclosure unless the borrower has timely applied for primary loan servicing. See the discussion of the proposed changes to § 1951.909(b) above. In addition, applications for preservation loan servicing or debt settlement submitted after the initial loan servicing notice will not delay acceleration or foreclosure. Once foreclosure occurs, if it is in FmHA's financial interest to bid on the property, as determined in accordance with § 1955.15(f)(5) and Exhibit G–1 of subpart A of part 1955 of this chapter, FmHA will bid at the foreclosure sale. If FmHA is the successful bidder, the property will come into FmHA's inventory and the borrower will be offered another opportunity to apply for preservation loan servicing.

FmHA proposes to revise §§ 1951.911(a)(8) and 1951.911(b)(7) to allow the borrower to negotiate the FmHA appraisal of the property in accordance with § 1951.909(i).

The items for the proposed revisions for §§ 1951.912, .913 and .914 are discussed elsewhere in this document except § 1951.914 will be revised to provide for the taking of a new promissory note and real estate lien for any shared appreciation due when the borrower is unable to pay the amount due under the agreement. The new note will be a non-program loan at ineligible rates and terms since this is not a Farmer Program loan as defined in this subpart. The existing regulations provide for adding the amount of shared appreciation due to the existing loan. In some cases, the remaining term of the existing loan was very short and therefore, increased the scheduled payment to more than the borrower could feasibly pay. It also was detrimental to junior lienholders as it increased the amount of the FmHA prior liens. It will be very easy to determine the balance due on the shared appreciation agreement at any time as this will now be carried as a separate account.

FmHA proposes to revise § 1951.916 to delete the reference to the health and safety of tenants or the community being endangered as a reason for granting an exception to the requirements in subpart S. That criterion may be appropriate for housing loans but is not applicable to farmer program loans.

Exhibit A of this subpart will be revised by adding Attachment 5–A, 6–A, 9–A and 10–A for processing new applications as defined in proposed § 1951.906. Attachments 5, 6, 9, and 10 are retained for use in processing applications submitted before November 28, 1990.

Attachment 5–A will be used to notify the borrower of the borrower's ineligibility for Primary Loan Servicing, FmHA's intent to accelerate or to continue acceleration, and the borrower's resulting rights. The attachment will incorporate Attachment 5 language but will add certain provisions as required by the FACT ACT. Language will be added to notify the borrower if the borrower is being denied restructuring and does not qualify for net recovery buyout because the borrower has sufficient nonessential assets to bring the account current. This revision implements section 1816(a) of the FACT ACT (CONACT section 353(b)(1). Each nonessential asset and its net recovery value will be listed on the form to aid the borrower in disputing any possible error in FmHA's determination. The attachment will offer the borrower an opportunity to meet with FmHA and/or hold a hearing to contest FmHA's decision including any finding and valuation of nonessential assets. The proposed rule will give the borrower 90 days (from the date of notice, or the date of completed appeal or negotiation if requested) to pay FmHA current by selling or borrowing against the value of the nonessential assets. FmHA's proposed policy on nonessential assets is discussed above in reference to § 1951.910. Attachment 5–A also is being revised to notify the borrower if primary loan servicing is being denied because the borrower has already received one writedown or buyout. This change implements section 1816(h) of the FACT ACT (CONACT section 353(n)). The borrower also will be notified of the right to request negotiation of FmHA's appraisal upon which denial of restructuring was based. This proposed change implements section 1816(g) of the FACT ACT (CONACT section 353(c)(7)) and is discussed above in relation to proposed changes to § 1951.909 (i).

The description of net recovery buyout also will be changed in Attachment 5–A to refer to the new $300,000 maximum debt forgiveness limit and the new one writedown or buyout limit. These restrictions are mandated by section 1816(h) of the FACT ACT (CONACT section 353(n) and (p)). The time period for accepting net recovery buyout also will be changed from 45 days to 90 days. This is in response to section 1816(f)(6) of the FACT ACT (CONACT section 353(c)(6)). Changes in the term of the Net Recovery Buyout Agreement (Exhibit C–1) and the calculation of recapture under the agreement also will be noted in Attachment 5–A. These changes are discussed above in relation to proposed changes to § 1951.909 (h)(4).

Attachment 6–A, the response form sent with Attachment 5–A, will incorporate the language of Attachment 6 but will implement the FACT ACT requirements discussed above in relation to Attachment 5–A.

Proposed Attachment 9–A will be an intent to accelerate notice used to notify the borrower who did not respond to FmHA's initial servicing notice (Attachment 1) sent on or after November 28, 1990. (Existing Attachment 9 will be used if the borrower was sent Attachment 1 before November 28, 1990, and did not respond.) Attachment 9–A also will be used if the borrower did not return Exhibit F, Attachment 2, accepting FmHA's offer of restructuring, requesting an independent appraisal or negotiation of the appraisal, or agreeing to pay FmHA the net recovery value of nonessential assets. Attachment 10–A is the response form which will accompany Attachment 9–A. These new attachments will incorporate the language of Attachments 9 and 10, but will include the following change. The borrower will be notified that the right to appeal an FmHA appraisal does not apply where FmHA already has negotiated the appraisal. This policy is discussed above in relation to proposed changes to § 1951.909(i).

Exhibit C–1 will be used as the recapture agreement for buyouts processed as a result of new applications. Buyouts completed prior to November 28, 1990, will use the existing Exhibit C as the recapture agreement. Exhibit C–1 will increase the term of the agreement from 2 years to 10 years. Recapture will not exceed the difference between the value of the property at the time of the sale or conveyance (rather than the time the agreement was executed) and the net recovery value. A transfer of the property to a spouse or child who is actively engaged in farming the property will not be considered a sale or conveyance under the agreement. In accordance with legislative history, however, FmHA's

lien on the property securing the agreement in such case will not be released and the transferee must assume liability under the agreement for the rest of its term. These proposed changes implement section 1816(f) of the FACT ACT (CONACT section 353(c)(6)).

FmHA also proposes to define conveyance in Exhibit C–1 to address partial sales, gifts and other below-market sales, the execution of Contract Sale/Purchase Agreements, and foreclosures. In accordance with present policy, the Agency will consider all of these forms of conveyance to trigger recapture under the agreement. This proposed definition, in part, attempts to address a silence in the agreement which often allowed (former) borrowers to violate the intent of the recapture agreement by transferring less than full ownership in all of the security without repaying FmHA for the debt it had written off. The proposed definition of "convey," however, will not include mortgages or deeds of trust as these will be junior to FmHA's lien. Exhibit C–1 also will limit the amount of recapture to the actual amount of gain realized by the borrower in the conveyance. This ceiling amount is described as the fair market value of the real estate at the time of sale or conveyance minus the unpaid balance of prior liens at the time of sale or conveyance. This description recognizes that the (former) borrower must pay any prior liens on the property from the sales price before it can repay FmHA towards the amount of debt which it agreed to write off. The Agency wants to avoid demanding a recapture amount which it knows the (former) borrower will not have the cash to pay. Exhibit C–1 also reorganizes and clarifies information contained in existing Exhibit C to improve readability. For example, the new exhibit states that FmHA's lien will be secondary to a lien specifically listed in the agreement. The prior lien, however, cannot exceed the net recovery buyout amount.

Exhibit E of this subpart will be revised as follows. The title will be changed to Notification of Request for Mediation or Meeting of Creditors and Other Options." The new options discussed in this notice available to borrowers who submitted a "new application" will be the opportunity to have an independent appraisal, to negotiate an appraisal, and to pay FmHA the net recovery value of certain nonessential assets which FmHA has determined the borrower owns. These changes will implement section 1816 (g), (b), and (o). Negotiation of appraisals is discussed above in relation to proposed changes to § 1951.909(i). If borrowers do not have a current independent appraisal at the time of requesting negotiation, they will be advised to obtain one and FmHA will provide them a list of qualified appraisers upon their request. FmHA's policy on nonessential assets is discussed above in relation to proposed changes to § 1951.910. Borrowers also will be informed in Exhibit E that if they wish to dispute FmHA's finding that they own certain nonessential assets, they will be given a chance to request a meeting and/or appeal the issue in a later notice.

Current Attachment 1 to Exhibit E will be used as the response form for borrowers who submitted applications before November 18, 1990. Attachment 2 will be added as the response form for borrowers who submitted new applications. The attachment incorporates the new options available to the borrower discussed in proposed Exhibit E.

Exhibit F which notifies the borrower of FmHA's offer to restructure the debt also will be revised to incorporate new options made available by the FACT ACT. As with proposed Exhibit E, these options are the opportunity to negotiate the appraisal and the opportunity to pay FmHA the net recovery value of certain nonessential assets which FmHA has determined the borrower owns. In addition, proposed Exhibit F will advise borrowers that if they wish to dispute FmHA's finding that they own certain nonessential assets, they will be given a chance to request a meeting and/or appeal the issue in a later notice.

Current Attachment 1 to Exhibit F will be used as the response form for borrowers who submitted applications before November 18, 1990. Attachment 2 will be added as the response form for borrowers who submitted new applications. The attachment incorporates the new options available to the borrower discussed in proposed Exhibit F.

Exhibit G of this subpart will be revised to allow for the capitalization of all the interest that has accrued when reamortizing the loan based on a new application. Under current regulations, interest that is less than 90 days past due is not being capitalized. This is based on the former prohibition in CONACT section 331(h) which was struck by section 1805(b) of the FACT ACT.

Exhibit H of this subpart will be revised to expand the eligibility criteria of the conservation easement program. All Farmer Program loans secured by real estate will be eligible for conservation easements in accordance with this exhibit. Nondelinquent borrowers who have loans secured by real estate will be eligible for a credit of up to 33 percent of the amount of the loan. Previously, only loans closed prior to December 23, 1985, were eligible for conservation easements, and then only for delinquent borrowers. These proposed revisions implement section 1815 of the FACT ACT (CONACT section 349). Exhibit H also is being revised to state that in the case of a delinquent borrower all of the borrower's Farmer Programs loans, not just those closed prior to December 23, 1985, that are secured by the real estate on which the easement will be placed, will be eligible to be credited for the conservation easement. This change is also consistent with existing FmHA policy.

Exhibit I of this subpart sets out guidelines for determining adjustments for Net Recovery Value of Collateral under § 1951.909(f). The exhibit will be revised for better organization, readability and clarification. In calculating the average holding period for suitable real estate properties held in inventory, FmHA will not consider such properties leased under the Preservation Loan Servicing Program for up to five years. Such consideration would skew the average designed to measure the time FmHA takes to remove properties from its inventory. A provision also will be added to provide for miscellaneous costs typically incurred for the sale of acquired chattels. In some cases, chattels are taken into inventory and some costs are incurred.

Exhibits L and N of this subpart will be revised to add a statement to require Form FmHA 1955–1, "Offer to Convey Security," be submitted at the time a preacquisition agreement is processed as this is needed to complete the processing of the agreement. The statement contains a provision for terminating the preacquisition agreement if FmHA acquires the property prior to the completion of processing the agreement as it will no longer be needed since FmHA already will own the property. Also, the provision for servicing the agreement has been added as it was previously inadvertently omitted.

Appropriate reference changes will be made in the final rule to other FmHA regulations as needed to conform with the changes adopted in the final rule version of these proposed regulations.

List of Subjects

7 CFR Part 1900

Appeals, Credit, Loan programs—Housing and community development, Appeal procedures.

7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Debt Restructuring.

Therefore, Chapter XVIII, title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1900—GENERAL

1. The authority citation for Part 1900 continues to read as follows:

Authority: 7 U.S.C. 1989; 31 U.S.C. 3701; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart B—Adverse Decisions and Administrative Appeals

2. Section 1900.53 is amended to redesignate paragraph (c) as (e); paragraph (b) is revised and new paragraphs (c) and (d) are added to read as follows:

§ 1900.53 Adverse action procedures.

* * * * *

(b) When an applicant or borrower who is also an applicant for FmHA services wishes to contest an appraisal of property value (except for appraisals made in connection with farmer program primary and preservation loan servicing), the applicant or borrower must be advised that he or she must request review of the appraisal by the State Director of FmHA before the appeal. Exhibit B–3 of this subpart will be used to notify the appellant. If an applicant or borrower seeks such a review, the time for requesting an appeal will be extended until after the State Director has acted on the review request. The State Director will review each such request and, when in his or her sole discretion it is deemed appropriate, may send a representative to make an on site review. If this does not result in a resolution of the matter, Exhibit B–4 of this subpart and Form FmHA 1900–1 will be sent to the appellants to notify them of their appeal rights.

(c) Appraisals involving farmer program primary and preservation loan servicing may be appealed directly to the Area Supervisor, National Appeals Staff, without prior review by the State Director. The appellant bears the burden of showing why the appraisal is in error. The appellant may submit an independent appraisal at his/her cost, from a qualified appraiser in accordance with § 1951.909(i) of subpart S of part 1951 of this chapter. The appraisal must conform to Agency appraisal regulations applicable to the loan program. If the two appraisal values vary by no more than five percent, the FmHA appraisal will be considered the basis of valuation.

(d) Appraisals involving farmer program primary and preservation loan servicing for new applications, as defined in § 1951.906 of Subpart S of part 1951 of this chapter, may be negotiated with FmHA in lieu of an appeal of the appraisal in accordance with § 1951.909(i) of subpart S of part 1951 of this chapter. The applicant may object to the FmHA appraisal based upon his/her separate, current appraisal. The borrower must ask the FmHA, in writing, to negotiate the appraisal. The results of a negotiated appraisal are not appealable.

* * * * *

3. Section 1900.55 is amended by adding paragraphs (a) (17) and (18) to read as follows:

§ 1900.55 Appealable and nonappealable decisions.

(a) * * *

(17) Negotiated appraisals involving primary and preservation loan service programs for new applications, as defined in § 1951.906 of subpart S of, part 1951 of this chapter. Refer to § 1900.53(d) of this subpart for borrower's negotiation rights.

(18) The County Committee's random selection by lot of an applicant for the purchase of suitable farm inventory property.

* * * * *

4. Section 1900.55(b) is amended by inserting the words "as provided for in § 1900.53(c)" before the word "without" in the last sentence.

5. Section 1900.56 is amended by revising paragraph (a)(2) to read as follows:

§ 1900.56 Appeal requests.

(a) * * *

(2) The appellant's case file including the FmHA appraisal will be made available to the appellant or his representative at the FmHA decision maker's office for 10 working days following the receipt of a request for appeal. If the appellant has made a request to inspect or to receive copies of FmHA material concerning the case, the material will be made available to the appellant or the appellant's representative at the FmHA decision maker's office as soon as possible, but no later than 10 working days following the receipt of the request for the material. A written request from the appellant will not be required. Requests for information of a confidential nature exempt from disclosure under § 2015.204 of FmHA Instruction 2015–E, (available in any FmHA office) will be handled in accordance with that Instruction. An FmHA employee will insure that no material is destroyed or removed from the file.

* * * * *

6. Section 1900.57 is amended by removing paragraph (m)(3), redesignating paragraph (m)(4) as (m)(3), and adding a new paragraph (n) to read as follows:

§ 1900.57 Hearing rules.

* * * * *

(n) *Farmer Program inventory property appeals.* (1) All applicants who were not considered in the same priority category as the applicant selected by the County Committee, may appeal their exclusion from the priority category. The inventory property will not be sold until all appeals under this paragraph are exhausted.

(2) If an appeal results in a determination that the appellant(s) was improperly excluded from the priority category, a new selection will be made under § 1955.107(e)(2) of subpart C of part 1955 of this subpart. The appellant(s) will be included in the priority category from which the random selection is made.

7. Section 1900.59 is amended by adding a new paragraph (d) to read as follows:

§ 1900.59 Effect of appeal decision.

* * * * *

(d) *Implementation.* Except as noted in paragraph (c) of this section and § 1900.61 of this subpart, the decision maker shall, upon having a case returned pursuant to the decision of a hearing officer, State Director or Director, National Appeals Staff, implement the decision within a reasonable period.

8. Exhibit B–2 of Subpart B is revised to read as follows:

Exhibits to subpart B

* * * * *

Exhibit B–2—Letter for Notifying Applicants, Lenders, Holders and Borrowers of Unfavorable Decision Reached at the Meeting

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration

(Insert Address)

Date

Dear _____:

We appreciated the opportunity to review the facts relative to [your application/request for FmHA services] [the assistance you are presently receiving]. We regret that our meeting with you did not result in a satisfactory conclusion.

(Insert here the adverse decision and all the specific reasons for the adverse action).

See attachment for your appeal rights. (Attach Form FmHA 1900–1.) (For guaranteed loans, except loss claims, the applicant and lender must jointly request an appeal.)

A request for a hearing must be sent to the Area Supervisor, National Appeals Staff, _____ (address), postmarked no later than _____ (month), _____ (date). (Insert date 30 days from date of letter.)

Note: If you object to the FmHA appraisal relating to an application for Primary and Preservation Loan Service Program, based upon your separate, current appraisal, and your application for servicing was filed on or after November 28, 1990, you may ask the FmHA, in writing, to negotiate the appraisals with you. To do this, you must provide FmHA with a copy of your current independent appraisal or you must now obtain, at your cost, an independent appraisal of your property. The appraisal and the appraiser must meet certain standards published in FmHA regulations. You must provide FmHA a copy of your independent appraisal within 30 days of requesting negotiation. Once you have submitted your appraisal to FmHA, you and FmHA will choose an independent appraiser to complete a third appraisal. You must pay one-half of the cost of the third appraisal. FmHA will pay for the other half of the third appraisal. Following the completion of the third appraisal, the average of the two appraisals that are the closest in value, as determined by FmHA, shall become the final appraisal. The final negotiated appraisal is not appealable. If you do not choose to negotiate the appraisal, you may, in lieu of negotiation, appeal the FmHA appraisal.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

(Decision Maker)
(County Supervisor may sign for County Committee)

(Title)

PART 1951—SERVICING AND COLLECTIONS

9. The authority citation for Part 1951 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C.1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart S—Farmer Programs Account Servicing Policies

10. In subpart S of part 1951, § 1951.910 is added and the subpart heading and §§ 1951.901 through 1951.909 and §§ 1951.911 through 1951.950 are revised to read as follows:

PART 1951—SERVICING AND COLLECTIONS

Subpart S—Farmer Programs Account Servicing Policies

§ 1951.901 Purpose.

This subpart sets forth the policies and procedures the Farmers Home Administration (FmHA) may use for notifying Farmer Program (FP) borrowers of primary, preservation and debt settlement programs as defined in § 1951.906 of this subpart, and for servicing delinquent or financial distressed borrowers who have FP loans. FP loans include Operating Loan (OL), Farm Ownership Loan (FO), Soil and Water Loan (SW), Softwood Timber Loan (ST), Emergency Loan (EM) Economic Emergency Loan (EE), Special Livestock Loan (SL), Economic Opportunity Loan (EO), Recreation Loan (RL), and Rural Housing Loan for farm service buildings (RHF) accounts. Cases involving unauthorized assistance will be serviced as described in subpart L of this part. For the purposes of subpart L of this part, when it has been determined that all the conditions outlined in § 1951.558(b) of subpart L of this part have been met, the loan will be treated as an authorized loan and may be serviced under this subpart. Cases involving graduation of borrowers to other sources of credit will be serviced as described in subpart F of this part. This Subpart Does Not Apply to Farmer Program Non-Program (NP) Loans.

§ 1951.902 Policy

Any FP borrower may request Primary or Preservation Loan Service Programs as described in §§ 1951.901(e) and 1951.911 of this subpart, respectively, and debt settlement in accordance with subpart B of part 1956 of this chapter. However, borrowers must be unable to pay their debt as scheduled before FmHA will grant such assistance. Servicing is a continuing process, not a single event. It begins the day a farmer comes into the FmHA supervised credit program. Servicing has two objectives: To help the farmers manage credit so they can return to private sector credit sources, and to minimize costs to the Government of providing servicing to farmers in financial difficulty. Borrower accounts must be managed with an overall objective of keeping the farmer in business while minimizing loan costs and losses to the Government. Where possible, servicing should be used prudently to avoid delinquency rather than to remove it. The indiscriminate and careless use of servicing tools ultimately increases borrower failures and program losses. FmHA will not reduce or terminate any portion of a borrower's debt that the borrower could pay by liquidating or borrowing agains' certain nonessential assets unencumbered by FmHA.

§ 1951.903 Authorities and responsibilities.

(a) *Responsibilities.* County Supervisors will make full use of the automated tracking system to track and manage the FP primary and preservation loan servicing and debt settlement programs.

(b) *Authorities.* All loan servicing decisions will be made by the County Supervisor except the approval of writedown and buyout of a borrower's debt. Also, all applications for debt settlement of FP loans must be recommended by the FmHA County Committee (except where the debt has been discharged through bankruptcy), approved by the FmHA State Director or the FmHA Administrator, (depending upon the amount of debt to be settled), and processed in accordance with the provisions of subpart B of part 1956 of this chapter. County Supervisors are authorized to accept a buyout when the borrower(s) pays the net recovery value of the FmHA security set forth in § 1951.909 of this subpart. Only State Directors are authorized to approve writedown and buyout of a borrower's debt. Writedown and buyout of a borrower's debts will be processed in accordance with § 1951.909 of this subpart. County Supervisors are authorized to consolidate and reschedule/reamortize a borrower's loans one time. If subsequent reschedulings/reamortizations are necessary, approval must be in writing by the District Director.

§§ 1951.904–1951.905 [Reserved]

§ 1951.906 Definitions.

As used in this subpart, the following definitions apply:

Borrower. An individual or entity which has or is presently operating the farm and has outstanding obligations to the Farmers Home Administration (FmHA) under any Farmer Program loan(s), without regard to whether the loan has been accelerated, but does not include any such debtor whose total

loans and accounts have been foreclosed or liquidated, voluntarily or otherwise. Collection-only borrowers are considered borrowers. Borrower also includes any other party liable for the FmHA debt. Non-Program (NP) Borrowers are not Considered Borrowers for Purposes of This Subpart.

Child. The son or daughter of a previous owner of property that has been acquired by FmHA and who is of legal age to enter into a binding contract.

CONACT or CONACT property. Property which secured a loan made or insured under the Consolidated Farm and Rural Development Act. Within this subpart, it shall also be construed to cover property which secured other Farmer Programs loans.

Debt settlement. The settlement of debts owed the United States for FmHA Farmer programs, Single-Family Housing and Multiple Family Housing programs. The types of debt settlement programs are: Compromise, adjustment, cancellation and chargeoff. These programs are administered in accordance with the provisions of Subpart B of Part 1956 of this chapter.

Delinquent borrower. A borrower who has failed to make all or part of a payment which is due for 30 or more calendar days after the due date.

Entity. A corporation, partnership, joint operation, or cooperative.

Entity members. For purposes of leaseback/buyback, entity members are stockholders of a corporation, partners of a partnership, joint operators of a joint operation and members of a cooperative, provided that the shareholders of the corporation, partners of the partnership, joint operators of a joint operation or members of a cooperative must be exclusively members of the same family. To be considered members of the same family, the members of an entity must be related by blood or marriage.

Farm plan. Form FmHA 431–2, "Farm and Home Plan," or other plans or documents acceptable to FmHA that will accurately reflect the production and financial management of the farming operation for one production cycle. FmHA will not Require the Use of Consolidated Financial Statements.

Farmer Program (FP) loans. This refers to Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Softwood Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

Feasible plan. A feasible plan is a plan based upon the applicant/borrower's records including income tax records, that show the farming operation's actual production and expenses. The records should be for the most recent five-year period when they are available. The income tax records will be returned to the borrower when the request has been processed. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farming operation, along with any other reliable off farm income, will provide the income necessary for an applicant/borrower to at least be able to:

(1) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(2) Meet scheduled payments on all debts, except as provided in § 1941.14 of subpart A of part 1941 of this chapter for annual production loans or subordinations made to delinquent borrowers.

(3) Meet up to 105 percent, but not less than 100 percent, of the scheduled payments on all debts, except as provided in § 1941.14 of subpart A of part 1941 of this chapter, for annual production loans or subordinations made to a delinquent borrower submitting a "New Application."

(4) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower, which is in accordance with the essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which reside in the same household.

Foreclosed. The completed act of selling security either under the "power of sale" in the security instrument or through court proceedings.

Good Faith. An eligibility requirement for Primary Loan Servicing including Net Recovery Buyout, and Leaseback/Buyback. A borrower is considered to have acted in "good faith" if the borrower has carried out the agreements set forth on Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security" and any other written agreements made with FmHA. FmHA must substantiate any allegations of fraud, waste, or conversion with a written legal opinion by the Office of the General Counsel (OGC). A borrower will not be considered to lack "good faith" if the sole basis for such determination was the disposition of normal income security as defined in § 1962.4 of subpart A of part 1962 of this chapter prior to October 14, 1988, without FmHA's consent and the borrower demonstrates that the proceeds were used to pay essential family living and farm operating expenses that FmHA could have approved according to § 1962.17 of subpart A of part 1962 of this chapter.

Homestead Protection. This refers to the right of a former owner to lease with an option to purchase the Homestead Protection property, not to exceed 10 acres.

Homestead Protection property. This refers to a borrower's principal residence which secured a Farmer Program loan.

Indian Reservation. Indian reservation means all land located within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a federally recognized Indian tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally recognized Indian Tribe.

Leaseback/Buyback Property. Real farm and ranch property and any off-farm principal residence(s) of the operator(s) which secured a FP loan. Any off-farm principal residence(s) of the former borrower(s) and/or owner(s) who are not the operator(s) of the farm or ranch property, are not considered leaseback/buyback property.

Liquidated. The completed act of voluntarily selling security to end the obligation for the debt, or involuntarily as the result of a completed civil suit against a borrower to recover collateral against the debt. The filing of a claim in a bankruptcy action is not a complete liquidation of the borrower's accounts. Collection-only accounts are not considered liquidated.

Loan service program. Loan Service Program means a Primary Loan Service Program or a Preservation Loan Service Program for FP borrowers.

New application. An application submitted by a borrower on or After November 28, 1990, for loan servicing and/or debt settlement. This does not include an application reconsidered after an appeal or revision of an application submitted before November 28, 1990,

Nonessential assets. Nonessential assets are assets which FmHA does not have a lien on and which the borrower has an ownership interest in, that:

(1) Do not contribute a net income to pay essential family living expenses or

to maintain a sound farming operation (See § 1962.17 of subpart A of part 1962 of this chapter for further guidance.); and

(2) Are not exempt from judgment creditors or in a bankruptcy action. Each State Director with the guidance of the Office of the General Counsel will issue a State Supplement to establish guidelines on items that are exempt from judgment creditors and are exempt under bankruptcy law in accordance with the laws for their State.

Non-Program (NP) loan. A NP loan results when loan(s) are made to ineligible applicants and/or transferees in connection with loan assumptions and sale of surplus inventory properties at ineligible terms after first being offered for public sale by sealed bid or auction. A borrower is not considered to have a NON-PROGRAM loan, if the borrower is found to be ineligible after receiving the loan, when the reason the borrower was originally determined eligible by FmHA or by a court of law, was due to a mistake on FmHA's part.

Owner. An individual or an entity which held the fee title to the security but who may or may not have operated the farm at the time it was taken into inventory. The owner need not have been an FmHA borrower in the sense that the owner was personally obligated on a loan from FmHA, but the owner must have pledged the farm as security for a CONACT loan.

Preservation loan service program. Preservation loan service program means:

(1) Homestead protection as described in § 1951.911 of this subpart, and

(2) Leaseback or buyback of farm land as described in § 1951.911 of this subpart.

Previous operator. An individual or an entity who leased the farm which collateralized a CONACT loan and conducted the day to day business at the time the farm was taken into inventory. The previous operator does not need to be an FmHA borrower.

Primary loan service program. Primary loan service program means:

(1) Loan consolidation, rescheduling, or amortization;

(2) Interest rate reduction, including use of the limited resource program;

(3) Loan restructuring, including deferral, or writing down of the principal or accumulated interest charges, or both, of the loan; or

(4) Any combination of actions listed in the paragraphs (a), (b), and (c) of this definition.

(i) *Consolidate.* Consolidate means to combine and reschedule the rates and terms of two or more notes of the same type of OL or EO loans, EE operating type loans or EM loans. EM actual loss loans will not be consolidated.

(ii) *Deferral.* Deferral is an approved delay in making regularly scheduled payments, including softwood timber (ST) loan.

(iii) *Limited Resource Program.* The limited resource program is a reduction of interest rates for operating loans (OL), farm ownership loans (FO) and soil and water loans (SW).

(iv) *Reamortization.* Reamortization means to rearrange the installment payments of a real estate loan and may include changing the interest rate and terms of the loan made for subtitle A purposes.

(v) *Reshedule.* Reschedule means to rewrite the rates and/or terms of OL, SL, EO loans, EE operating-type loans or EM loans made for subtitle B purposes.

(vi) *Writedown.* For purposes of this part, writedown is reducing a borrower's debt in an amount that will result in a feasible plan of operation. This includes Farm Debt Restructure and Conservation Set-Aside Easements as set forth in Exhibit H of this subpart.

§ 1951.907 Notice of loan service programs.

(a) *Notification of borrowers who file bankruptcy.* The account will be serviced in accordance with instructions from the Regional Office of the General Counsel (OGC), and in accordance with § 1962.47(a)(3) of subpart A of part 1962 of this chapter.

(b) *Notification of borrowers who have been discharged in bankruptcy or who have plans confirmed by bankruptcy courts.* If the borrower has been discharged in bankruptcy or the borrower is operating under a confirmed plan, the account will be serviced in accordance with instructions from the Regional OGC and in accordance with § 1962.47 (a) or (c) of subpart A of part 1962 of this chapter.

(c) *Notification of borrowers less than 180 days delinquent.* The County Supervisor will contact a delinquent farmer program borrower within 30 days after the borrower's account becomes delinquent and will, within 10 days, schedule a meeting to determine the reasons for the delinquency. A record of this contact will be placed in the borrower's loan file. If the borrower does not have the resources to bring the account current, the County Supervisor will use the FmHA computer program, Debt and Loan Restructuring System (DALR$) to consider the Primary Loan Service program authorized by § 1951.909 of this subpart. If the County supervisor determines that the use of the Primary Service Programs will not assist the borrower in being able to develop a feasible plan, the County Supervisor will give the borrower Attachment 1 only of Exhibit A of this supart. The County Office case file will be documented to provide a record that the borrower was provided a copy of Attachment 1 of Exhibit A of this subpart. If at the initial meeting it is determined that writedown is the only alternative to keep the borrower in farming, the borrower's account will be processed in accordance with § 1951.909 of this subpart. Delinquent accounts will not need to be 180 days delinquent in order to consider writing down the debt.

(d) *Notification of borrowers 180 days delinquent.* Farmer Program borrowers who are 180 days delinquent, and in financial distress which exists because a borrower cannot develop a feasible plan by using rescheduling, reamortization, limited resource rates and/or deferral at maximum terms, will be sent Exhibit A of this subpart with Attachments 1 and 2 by certified mail, return receipt requested. Borrowers who are 180 days delinquent and have also violated their loan agreements with FmHA will be handled in accordance with paragraph (e) of this section. In addition to the requirements set forth above, FmHA County Supervisors will provide Exhibit A with Attachments 1 and 2 of this subpart to all Farmer Program borrowers, as follows:

(1) At the time an application is made for participation in an FmHA loan service program, unless such application is the result of the notice provided to the borrower in accordance with this section,

(2) On written request of any FP borrower, whether delinquent or not, and

(3) If a borrower has not previously received Exhibit A with Attachments 1 and 2 of this subpart, such Exhibit and Attachments will be provided before the earliest of:

(i) Initiating any FmHA liquidation action,

(ii) Accepting a voluntary conveyance of security, or the borrower requesting permission to sell security,

(iii) Accelerating payments on the loan,

(iv) Repossessing the borrower's property,

(v) Foreclosing on property, or

(vi) Taking any other collection action.

(e) *Notification of borrowers in non-monetary default or for delinquent borrowers also in non-monetary default or when a prior or junior lienholder is foreclosing and FmHA is notified of the foreclosure.* Farmer Program borrowers who are in non-monetary default will be sent Attachments 1, 3, and 4 of Exhibit

A of this subpart by certified mail, return receipt requested. If a case is in the hands of the U.S. Attorney, no loan servicing action will be taken without the U.S. Attorney's concurrence as set forth in § 1962.49 of subpart A of part 1962 of this chapter. If the borrower has filed bankruptcy, the account will be serviced in accordance with instructions from OGC. Any servicing request will be processed as indicated in § 1951.909 of this subpart. The account will not be liquidated until the borrower has the opportunity to appeal any adverse decision. After any final FmHA appeal decision, that does not result in a resolution on the loan defaults, the account will be accelerated as set forth in § 1955.15 of subpart A of part 1955 of this chapter.

(f) *Request for primary loan service programs, debt settlement programs or preservation loan service programs.* FP borrowers who are sent Exhibit A, with Attachments 1 and 2 or Attachments 1, 3, and 4 must, within 60 days after receiving the notices, request consideration for Primary and Preservation Loan Service and/or Debt Settlement programs by completing Attachment 2 or Attachment 4, as appropriate, and returning the attachment to the FmHA County Supervisor with the required forms for a completed application. FmHA will proceed with liquidation action if the borrower's request is not received within 60 days, or the borrower is sent Attachments 3 and 4, and does not request a hearing to appeal the non-monetary default within 30 days. If a borrower has moved and left a forwarding address, the certified mail will be forwarded. If no forwarding address is given, the mail will be returned to the County Office unsigned. The 60-day response period will begin with the date the Post Office stamps the return receipt indicating the letter cannot be delivered to the borrower.

(1) An application for loan service and debt settlement programs will include the following forms (available in any FmHA office):

(i) Form FmHA 410–1, "Application for FmHA Services," including a current (within 90 days) financial statement of all individuals and entities personally liable for the FmHA debt.

(ii) Form FmHA 410–8, "Application Reference Letter."

(iii) Form FmHA 410–9, "Statement Required by the Privacy Act."

(iv) Form FmHA 431–2, "Farm and Home Plan," or any other plan acceptable to FmHA that sets forth a plan of operation.

(v) Form(s) FmHA 440–32, "Request for Statement of Debts and Collateral."

(vi) Form(s) FmHA 1910–5, "Request for Verification of Employment."

(vii) Form FmHA 1924–1, "Development Plan," if development is planned. Complete plans, specifications, and cost estimates must be attached to Form FmHA 1924–1. When development is required to comply with "Highly Erodible and Wetland" requirements, estimated costs and the conservation plan developed by SCS will be used to satisfy this requirement.

(viii) Form AD–1026, "Highly Erodible Land and Wetland Certification," is included as part of the complete application after being completed by SCS. (This form is available at SCS County Offices.)

(ix) Form SCS CPA–26, "Highly Erodible Land and Wetland Determination," if not previously on file with FmHA for the farm operation(s). This form is included as part of the complete application after being completed by SCS. (This form is available at SCS County Offices.)

(x) An ASCS photo of the farm, on which the applicant must show the homestead site to be considered in processing a request for Homestead Protection. This information does not need to be provided if the applicant does not want to be considered for homestead protection.

(xi) An ASCS photo of the farm, on which the applicant must show that portion of the farm and approximate acres to be considered in a request for debt restructuring provided for in the Farm Debt Restructure and Conservation Easement program. This information does not need to be provided if the applicant does not want to be considered for conservation easement.

(xii) Form FmHA 1956–1, "Application For Settlement of Indebtedness." This form must be completed if the borrower wants to be considered for debt settlement when the borrower applies for loan servicing.

(xiii) The most recent five years income tax records when they are available. Income tax records will be returned to the borrower when the request has been processed.

(2) The FmHA County Supervisor will provide the borrower with copies of the above forms when Exhibit A is forwarded to FP borrowers. When requested by the borrower, copies of FmHA regulations and the forms manual inserts (FMI) will be provided within 10 days of the request. The borrower's County Office case file will be documented to provide a record that the FmHA regulations were sent. Borrowers who were sent Exhibit A and Attachments 1 and 2 of this subpart (borrowers who were 180 days delinquent) but not previously accelerated will be sent Attachments 9 and 10, or 9–A and 10–A, of Exhibit A of this subpart, as applicable, if they fail to respond within 60 days after they were sent Exhibit A and Attachments 1 and 2 of this subpart. If the borrower has filed for bankruptcy, the account will be serviced in accordance with instructions from OGC. The account will not be accelerated until any appeal has been concluded.

(3) Not more than one 60 day period will be provided to a borrower to respond to the notice of loan service programs. Subsequent notices as provided for in § 1951.907 of this subsection will not be issued until the first notice is resolved.

(4) Borrowers may also request debt settlement at other times in accordance with subpart B of part 1956 of this chapter.

§ 1951.908 [Reserved]

§ 1951.909 Processing primary loan service programs requests.

For borrowers who submit new applications also see § 1951.910 of this subpart.

(a) *FmHA responsibilities.* Within 90 days after receipt of Attachment 2 or 4, the County Supervisor will consider all Primary Service Programs options in this subpart. The County Supervisor must use the FmHA computer program, Exhibit J, "Debt and Loan Restructuring System (DALR$)," for borrowers who applied before November 28, 1990, or Exhibit J–1 of this subpart for borrowers who submit a new application, to attempt to find the combination of loan service programs that will result in a feasible plan for the borrower. Borrowers who request loan servicing and who have disposed of all the FmHA security will be processed in accordance with subpart B of part 1956 of this chapter. If the borrower's completed application for Primary Loan Servicing includes a request for the Farm Debt Restructure and Conservation Set-Aside Easement Program, as indicated by the borrower's submission of the information required in § 1951.907 (f)(1)(xi) of this subpart, the County Supervisor will determine if the borrower is eligible based on criteria as set forth in Exhibit H of this subpart. If the borrower is eligible, the County Supervisor will make an estimate of the inputs needed to permit the DALR$ Computer Program to make the calculations of feasibility of the Conservation Set-Aside Easement. The assumptions used to establish the

estimates will be documented in the borrower's case file and will be based on the County Supervisor's knowledge of the borrower's farm, land values, the borrower's repayment ability, and the proposed easement acreage. When the DALR$ calculations for restructing are completed, the borrower will be notified as set forth in paragraph (h) of this section.

(b) *Adverse determination.* (1) If the County Supervisor or approval official determines that the borrower is not eligible for any of the Primary Loan Service Programs or restructuring is not feasible because of debt held by other lenders, the borrower will be advised of mediation or meeting of creditors as provided in paragraph (h)(3) of this section. If mediation or the meeting of creditors does not result in a feasible plan, the borrower will be sent Attachments 5 and 6, or 5–A and 6–A, of Exhibit A of this subpart, as applicable. These notices list and explain the options available to the borrower.

(2) Borrowers sent notices on or after November 28, 1990, who do not buyout at the net recovery value or who indicate in writing that they do not wish to buyout at the net recovery value, will automatically be considered for debt settlement if the borrower submitted an "Application For Debt Settlement." Any appeal of a primary loan servicing denial will be completed before FmHA begins any further processing of the borrower's Debt Settlement and/or Preservation Loan Service Programs request. Once the appeal is concluded and if the adverse decision on restructuring is upheld, the borrower will be considered for the Debt Settlement and/or Preservation Loan Service Programs. FmHA will complete the processing of the borrower's application for Debt Settlement in accordance with part 1956 of subpart B of this chapter. Homestead Protection and/or Leaseback/Buyback will be processed in accordance with § 1951.911 of this subpart. No acceleration or foreclosure will occur until the appeal process has been completed for servicing and/or debt settlement requests timely submitted under this subpart.

(3) Borrowers who submitted new applications may request a negotiated appraisal in accordance with paragraph (i) of this section if they object to the FmHA appraisal. Negotiation of the appraisal, if requested by the borrower, will take place before mediation or a voluntary meeting of creditors. If the borrower does not negotiate the FmHA appraisal, the borrower will be given the opportunity to appeal the FmHA appraisal by checking the appropriate block for an appeal on Attachment 6–A or 10–A of Exhibit A of this subpart.

(c) *Eligibility.* The County Supervisor or approval official authorized by § 1951.903(b) of this subpart must find that the borrower who has applied for Primary Loan Service Programs meets all of the following requirements:

(1) The delinquency or financial distress does exist and any delinquency is due to circumstances beyond the control of the borrower due to a reduction in income which reduces the operator's cash flow to a point where outflows exceed inflows, and which causes the need for Primary Loan Service Programs. A reduction of income does not by itself mean that the borrower is eligible. Acceptable reasons for reductions of income which could make a borrower eligible for Primary Loan Service Programs include:

(i) The reduction in essential income from a non-farm job due to unemployment or underemployment of the borrower-operator or spouse caused by circumstances beyond the borrower's control; or

(ii) Illness, injury, or death of an individual borrower, stockholder, member or partner who operates the farm; or

(iii) Natural disasters, an outbreak of uncontrollable disease, and/or uncontrollable insect damage which caused severe loss of agricultural production that reduced the repayment ability of the borrower so that scheduled payments cannot be made; or

(iv) Economic factors that are widespread and not limited to an individual case, such as high interest rates or loan market prices for agricultural commodities as compared to production costs, that reduce the repayment ability of the borrower so that the scheduled payments cannot be made.

(2) The borrower has acted in good faith as defined in § 1951.906 of this subpart.

(3) A farmer program borrower can only receive a lifetime limit of either one writedown or one buyout. The only exception to this limit is a borrower who received a writedown or buyout exclusively for farmer program loans that were made on or before January 6, 1988, (as determined by the date of the original promissory note). In such case, the borrower can still receive the lifetime limit of either one writedown or one buyout on new applications.

(4) A borrower who submits a new application can receive a maximum lifetime limit of $300,000 for either a writedown, or a buyout regardless of the amount of any writedown or buyout received before November 28, 1990. This limitation is subject to the limitation of paragraph (c)(5) of this section.

(5) A borrower that has received a writedown or a buyout for any loan made after January 6, 1988, (as determined by the date of the original promissory note) is not eligible for any additional writedown or another buyout for any loans made after January 6, 1988. This applies to new applications only.

(6) New applications received from borrowers who do not meet the eligibility requirements of paragraphs (c)(3), (c)(4), or (c)(5) of this section will be sent Attachments 5–A and 6–A of Exhibit A of this subpart that provide the borrower with the opportunity to appeal.

(7) It is not necessary to complete appraisals or determine a feasible plan of operation, if the borrower who has submitted a new application has already received a writedown, a buyout, or the maximum limit of $300,000 in accordance with paragraphs (c)(3), (c)(4) or (c)(5) of this section. The borrower will be sent Attachments 5–A and 6–A of Exhibit A of this subpart that provide the opportunity to appeal.

(8) Borrowers who do not meet the eligibility requirements of paragraphs (c)(1) or (c)(2) of this section will be notified of the adverse decision by sending the borrower Attachments 5 and 6, or 5–A and 6–A, of Exhibit A of this subpart, as appropriate. These notices provide the opportunity to appeal.

(9) Borrowers that have sufficient nonessential assets to bring the FmHA account current in accordance with § 1951.910 of this subpart are not eligible for assistance under this subpart.

(10) Borrowers must provide FmHA with a lien on certain essential assets in accordance with § 1951.910 of this subpart.

(d) *FmHA's feasibility determinations.* The County Supervisor must determine that the borrower will be able to:

(1) Develop a feasible plan as defined in § 1951.906 of this subpart.

(2) The loan, if restructured, generally must result in a net recovery to the Government, during the term of the loan as restructured, that would be equal to or greater than the net recovery value to the Government from involuntary liquidation or foreclosure as calculated in accordance with paragraph (f) of this section. A comparison to net recovery to the Government, however, will not be made when establishing conservation easements under Exhibit H of this subpart.

(e) *Primary loan service programs.* Any FP borrower may request Primary Loan Service Programs described in this subpart at any time. However, borrowers must show that they are not able to pay their debt as scheduled before FmHA will approve Primary Loan Service Programs. FmHA will consider the borrower's other assets in accordance with § 1951.910 of this subpart. Rescheduling, reamortization, consolidation, or deferral may be utilized for any eligible borrower. Existing deferrals must be entered into DALR$ as if it were canceled. Debt writedown will only be used for delinquent borrowers who cannot develop feasible plans of operations without debt writedown.

(1) *Consolidation and rescheduling of OL and EO loans, EE operating-type loans and EM loans made for Subtitle B purposes including EM loss loans.* This subsection explains how to consolidate and/or reschedule existing loans, providing the borrower agrees to such actions. When the County Supervisor determines that consolidation and/or rescheduling will assist in the orderly collection of the loan, the County Supervisor should take such action provided all of the following conditions exist:

(i) The borrower meets the eligibility requirements in paragraph (c) of this section;

(ii) Such action is not taken to circumvent FmHA's graduation requirements;

(iii) The borrower's account is not being serviced by the OGC or the U.S. Attorney and there are no FmHA plans to have the account serviced by either of these offices in the near future;

(iv) Loans may be rescheduled or reamortized, as appropriate, to bring the account current or to keep the account from becoming delinquent. A sufficient number of notes including all delinquent notes will be rescheduled to permit the development of a feasible plan of operation.

(v) The borrower will comply with the highly Erodible Land and Wetland Conservation provisions of Exhibit M of subpart G of part 1940 of this chapter.

(vi) Loans secured by real estate will not be consolidated and/or rescheduled, until the County Supervisor reviews the Government's real estate lien priority and value of security and decides that such an action will be in the best interest of the Government and the borrower. If there are any liens which were not in existence at the time the note was signed, the County Supervisor will ask the OGC for an opinion as to what lien position the Government will have if a new note is taken.

(vii) Only loans of the same type and interest rate will be consolidated.

(viii) EM actual loss loans will not be consolidated.

(ix) The County Supervisor will not consolidate a loan serviced under subpart L of this part with another loan.

(x) Loans that have been deferred under this section will not be consolidated and/or rescheduled during the deferral period.

(xi) Terms of consolidated and/or rescheduled loans are as follows:

(A) Consolidated and/or rescheduled loans will be repaid according to the borrower's repayment ability, but will not exceed 15 years from the date of the consolidation and/or rescheduling action, except:

(B) Repayment of loans solely for recreation and/or nonfarm enterprise purposes may not exceed seven years from the date of the consolidation and/or rescheduling action (the date the new note is signed).

(C) Repayment of EE loans may not exceed 20 years from the date of the original note.

(xii) Interest rates of consolidated and/or rescheduled loans will be as follows:

(A) The interest rate for consolidated and/or rescheduled loans will be the lesser of the current interest rate for that type of loan or the lowest original loan note rate on any of the original notes being consolidated and/or rescheduled. In the case of an OL-limited resource loan, it will be the lesser of the current limited resource OL loan rate or the original note rate. The interest rate for loans rescheduled but not consolidated will be the lesser of the current interest rate for that type of loan or the original loan note rate.

(B) At the time of the consolidation and/or rescheduling action, OL loans may be assigned a limited resource rate if: The borrower meets the requirements for the limited resource interest rate, and a feasible plan cannot be developed at regular interest rates and maximum terms permitted in this section.

(xiii) The original (old) note(s) will be marked "Rescheduled" and stapled to the new rescheduled promissory note and will be filed in the operation file. Copy(ies) for the borrower's(s') case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies filed as indicated above. If part of a note is written down, the written down note will be marked "Rescheduled with Debt Write Down," and will be filed as indicated above in this paragraph.

(xiv) For applications received before November 28, 1990, the amount of outstanding accrued interest more than 90 days overdue and any outstanding protective advances, as defined in § 1965.11(b) of subpart A of part 1965 of this chapter, made on the loan will be added to the principal at the time of consolidation and/or rescheduling (the date the new note is signed by the borrower). Protective advances do not include the payment of prior or junior liens. See section II E of Exhibit J of this subpart for an explanation of how to schedule payment of interest not more than 90 days overdue.

(xv) For new applications, the amount of outstanding accrued interest and any outstanding protective advances, as defined in § 1965.11(b) of subpart A of part 1965 of this chapter, made on the loan will be added to the principal at the time of consolidation and/or rescheduling (the date the new note is signed by the borrower) in accordance with the provisions of Exhibit J–1 of this subpart. Protective advances do not include the payment of prior or junior liens.

(2) *Reamortization of FO, SW, RL, RHF, EE, or EM loans made for real estate purposes.* This subsection explains how the FmHA County Supervisor can reamortize existing loans. NP loan debtors are not eligible to receive any program benefits including reamortization (see § 1965.34 of subpart A of part 1965 of this chapter). When the County Supervisor determines that a reamortization action will assist in the orderly collection of the loan, the County Supervisor should take such action, provided:

(i) The borrower meets the eligibility requirements of § 1951.909(c) of this subpart:

(ii) Such action is not taken to circumvent FmHA's graduation requirements;

(iii) The borrower's account is not being serviced by the OGC or the U.S. Attorney, and there are no plans to have the account serviced by either of these offices in the foreseeable future.

(iv) A feasible plan for the borrower cannot be developed with existing repayment schedule. A sufficient number of notes including all delinquent notes will be reamortized to permit the development of a feasible plan of operation.

(v) The borrower will comply with the Highly Erodible Land and Wetland Conservation requirements of Exhibit M of subpart G of part 1940 of this chapter, if applicable.

(vi) Loans that have been deferred in this subpart will not be reamortized

during the deferral period unless the deferral is cancelled.

(vii) Terms of repayment of reamortized loans are as follows:

(A) Reamortized installments usually will be scheduled for repayment within the remaining time period of the note or assumption agreement being reamortized. If repayment terms are extended, the new repayment period may not exceed 40 years from the date of the original note or assumption agreement or the useful life of the security, whichever is less. RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(B) The FmHA's lien priority may be affected if the final due date of the original loan is extended. A State supplement will be issued to provide instructions on the effect that a change in the final due date has on security instruments and the actions necessary to retain the Government's lien priority. The State supplement will also include instructions for releasing the original security instrument when a new one is obtained.

(viii) Interest:

(A) The interest rate will be the current interest rate in effect on the date of reamortization (the date the new note is signed by the borrower), or the interest rate on the original Promissory Note to be reamortized, whichever is less. In the case of a limited resource loan, it will be the limited resource FO or SW loan rate or the original loan note rate, whichever is less.

(B) At the time of the reamortization, an FO or SW loan may be changed to a limited resource interest rate if: The borrower meets the requirements for a limited resource interest rate, and a feasible plan cannot be developed at regular interest rates and at the maximum terms permitted in this section.

(C) For applications received before November 28, 1990, the amount of accrued interest more than 90 days overdue and any protective advances, as defined in § 1965.11(b) of subpart A of part 1965 of this chapter charged to the borrower's account, will be added to the principal at the time of the reamortization action (the date the new note is signed by the borrower). Protective advances do not include the payment of prior or junior liens. If there are no deferred installments, the first installment payment under the reamortization will be at least equal to the interest amount which will accrue on the new principal between the date the Form FmHA 1940–17 is processed and the next installment due date. See section II E of Exhibit J of this subpart for an explanation of how to schedule payments of interest not more than 90 days overdue. For new applications, the amount of outstanding accrued interest and any outstanding protective advances made on the loan will be added to the principal at the time of reamortization (the date the new note is signed by the borrower) in accordance with the provisions of Exhibit J–1 of this subpart.

(ix) The original (old) note(s) will be marked "Reamortized" and will be stapled to the new promissory note and filed in the operational file. Copies for the borrower(s) case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies filed as indicated above. If a part of a note is written down, the written down note will be marked "Reamortized with Debt Writedown" and will be filed as indicated above in this paragraph.

(3) *Deferral of existing OL, FO, SW, RL, EM, EO, RHF, and EE loans*—(i) *Loan deferrals.* Deferrals will be considered by FmHA only after it has been determined that consolidation, rescheduling, and reamortization, in accordance with this subpart, will not provide a feasible plan.

(ii) *Conditions.* In order to be considered for a deferral, the borrower must meet all of the following conditions:

(A) The need for the deferral must be temporary. To be "temporary" means that the borrowers will be able to show to the satisfaction of FmHA that they will be able to resume payment on the debt by the end of the deferral period, or the new payments, as established by using consolidation, rescheduling, or reamortization can be resumed at the end of the deferral period.

(B) Continuation of loan payments as presently scheduled without change, will unduly impair the borrower's standard of living. An unduly impaired standard of living is a condition whereby the borrower, due to circumstances beyond the borrower's control, is unable to pay essential family living expenses (partnerships, joint operators, corporations, and cooperatives do not have family living expenses), pay normal farm operating expenses, including reasonable and customary hired labor and/or salary paid to the operator(s) of a partnership, a joint operation, a corporation, or a cooperative, maintain essential chattels and real estate, and meet the scheduled payments of all debts.

(iii) *FmHA's determinations.* The FmHA approval official must:

(A) Determine that the borrower meets the eligible requirements of § 1951.909(c) of this subpart;

(B) Determine that a deferral of payments is necessary and appropriately document the conditions causing the need for deferral;

(C) If a borrower owns 50 acres or more of marginal land and a feasible plan cannot be developed after consideration of a deferral, the County Supervisor will inform the borrower about the Softwood Timber (ST) loan program authorized by Exhibit G of this subpart by sending Attachment 1 of Exhibit G of this subpart by certified mail, return receipt requested, within 5 days after the adverse deferral determination. If the borrower requests the County Supervisor to determine that an ST loan may allow the borrower to continue to farm, within 15 days of the borrower's receipt of Attachment 1, the County Supervisor will determine if the borrower is eligible, based on criteria as set forth in Exhibit G of this subpart. If the borrower is eligible the County Supervisor will help the borrower to develop a plan to determine if a feasible operation can be developed utilizing this program. The discussion will be documented in the borrower's case file.

(iv) *FmHA loan deferral considerations.* (A) A sufficient number of loans must be considered for deferral to permit the borrower to have a feasible plan.

(B) A deferral plan may include a reorganization of the farming operation, including the use of new enterprises, to overcome existing financial, economic or other limitations of the operation. If the proposed restructuring requires capital expenditures, a subordination or additional loan will be considered. Deferral of additional loan installments beyond those needed to allow the borrower to develop a feasible plan will not be used to create additional cash reserve for capital purchases. Such purchases are not considered operating expenses.

(C) A typical year during the deferral period is a year which most closely represents the borrower's operation for the entire deferral period. There may be no typical year for farming or ranching operations undergoing a major reorganization. If there is no typical year, then it will be necessary to develop a plan of operation for each year of the deferral.

(D) The deferral of loan installments is not intended to create a high net cash reserve where revenue substantially exceeds expenses. If the deferral of a complete note would cause a high net cash reserve during the entire deferral

period, a full deferral should not be granted. In such a case, a partial deferral should be considered to obtain a feasible plan of operation. The same approach should be used for situations in which there is no typical year and debt payments must vary throughout the deferral period.

(E) The borrower must submit feasible plans of operation to support any deferral request. Plans of operation in conjunction with loan deferrals must be realistic and supported by the borrower's actual records.

(v) *Additional and subsequent deferrals.* If, during the period of the initial deferral, the borrower is unable to make the scheduled payments, the borrower may again request Primary Loan Service actions. Existing deferrals must be cancelled prior to use of DALR$. If it is necessary to defer additional loans to develop a feasible plan, such action will be taken if the deferral will result in a greater net recovery to the Government than debt writedown. Borrowers may obtain subsequent deferrals after the deferral period provided the conditions of this subsection are met.

(vi) *Term and interest rate.* A deferral period will not exceed five (5) annual installments. Deferral interest rates will be determined as specified in paragraphs (e)(1)(xii) and (e)(2)(viii) of this section.

(A) All loans being deferred will be consolidated, rescheduled or reamortized, as applicable. The promissory note rescheduled, reamortized or consolidated for the deferral will show "zero" as the installments due during the period of the deferral if the whole note is deferred and will not be changed during the deferral period unless the conditions of paragraph (e)(3)(v) of this section are met. The County Supervisor will determine the amount of interest that will accrue during the deferred period. This interest will be repaid in equal amortized installments during the term of the loan remaining after the deferral period. The calculated installments will be added to the remaining installments for the remaining principal balance and inserted on the promissory note as a scheduled installment for the remaining period of the loan. The Finance Office will apply the payments made on the note in accordance with subpart A of this part. For applications received before November 28, 1990, the amount of outstanding accrued interest more than 90 days overdue and any outstanding protective advances, as described in § 1965.11(b) as subpart A of part 1965 of this chapter, made on the loan will be added to the principal at the time of the deferral (the date the new note is signed by the borrower). Protective advances do not include the payment of prior or junior liens. See section II E of Exhibit J of this subpart for an explanation of how to schedule payment of interest not over 90 days overdue. For new applications, the amount of outstanding accrued interest and any outstanding protective advances made on the loan will be added to the principal at the time of deferral (the date the new note is signed by the borrower).

(B) The FmHA field office will process the deferral via the FmHA field office terminal system in accordance with Form FmHA 1940-17. The FmHA Finance Office will remove the borrower's name from the delinquency report.

(C) If a deferral is approved, the borrower's name and the date of approval will be recorded and maintained in accordance with subpart A of part 1905 of this chapter (available in any FmHA office). The Finance Office will provide the County Office with a quarterly status report for each borrower who has received a deferral.

(D) Six months prior to the end of the deferral period the County Supervisor will notify the borrower in writing of the expiration of the deferral and the amount and date of the borrower's first upcoming installment of the FmHA debt.

(E) The County Supervisor must notify the Finance Office of any cancellation of a deferral by letter.

(vii) *Increase in repayment ability.* At the time the County Supervisor makes the analysis required by § 1924.60 of subpart B of part 1924 of this chapter, the County Supervisor will determine whether the borrower has had an increase in income and repayment ability. If an income increase is substantial enough to enable the borrower to graduate, the case will be handled in accordance with subpart F of part 1951 of this chapter. If an increase would enable the borrower to make some payments during the deferral period, the County Supervisor will, in writing, ask the borrower to sign a Form FmHA 440-9, "Supplementary Payment Agreement," within 30 days of the date of the written request. The letter will provide the borrower with the right to appeal as set forth in subpart B of part 1900 of this chapter. When doing the analysis to determine whether there is a substantial increase in income and repayment ability, the County Supervisor will determine whether this increase exists by comparing it to the original plan developed in the deferral application and also to plans developed for the current operating year to determine that the excess income is not needed for essential living and operating expenses or scheduled debt payment. If the borrower does not sign a Form FmHA 440-9 or appeal the request for a supplement payment within the required time, and/or does not honor the terms and conditions of the repayment agreement, such actions will be considered abuse of the program. The borrower's account will be handled as set forth in § 1951.907(e) of this subpart.

(4) *Writedown of FmHA loans.* Consideration must be given to nonessential assets in accordance with § 1951.910 of this subpart when writing down FP loans. The following conditions shall be met for writedown of FmHA loans:

(i) No other Primary Loan Service Program including deferral nor any combination thereof will produce a feasible plan that will allow the borrower to continue the operation;

(ii) A feasible plan, as defined in § 1951.906 of this subpart, must be developed that will result in a net recovery to the Government which is equal to or more than a net recovery from an involuntary liquidation or foreclosure;

(iii) The borrower must comply with the Highly Erodible Land and Wetland Conservation requirements of Exhibit M of subpart C of part 1940 of this chapter, if applicable.

(iv) The borrower must agree to a Shared Appreciation Agreement if the loan(s) is secured by real estate.

(v) Remaining debt after restructuring with the Primary Loan Servicing Programs will be rescheduled, reamortized, or deferred in accordance with paragraph (e) of this section.

(f) *Determining value of net recovery from involuntary liquidation.* Within 90 days of the County Supervisor's receipt of a complete application which requests Primary and Preservation Loan Service Programs, the County Supervisor must make the calculations required in this section. For new applications as defined in § 1951.906 of this subpart, nonessential assets will be considered in accordance with § 1951.910 of this subpart.

(1) The County Supervisor will determine the net recovery to the Federal Government equivalent to involuntary liquidation of the collateral securing the FmHA debt in accordance with Exhibit J or J-1 of this subpart, "Debt and Loan Restructuring System," as applicable, and will follow the guidance provided by State supplements and Exhibit I of this subpart, "Guidelines for Determining Adjustments for Net Recovery Value of Collateral." The County Supervisor will

determine the current market value of the collateral in the borrower's possession including tangible property in existence and of record in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) for real estate property, and on Form FmHA 440–21, "Appraisal of Chattel Property" (available in any FmHA office). The County Supervisor also will determine the current market value of any bank accounts, stocks and bonds, certificates of deposit and the like pledged to and/or in the possession of FmHA. Collateral may include real estate, chattels, tangible property and property such as bank accounts, stocks and bonds, certificates of deposit, and the like. Chattels include machinery, equipment, livestock, growing crops, and crops in storage. Tangible property may include accounts receivable (including Government Payments), inventories, supplies, feed, etc. From the current market value of the collateral in the borrower's possession, or pledged to and/or in the possession of FmHA (in the case of bank accounts, stock and bonds, certificates of deposit, and the like), the following adjustments will be made:

(i) Subtract the amount which would be required to pay prior liens on the collateral;

(ii) Subtract taxes and assessments, depreciation, management costs, and interest cost to the Government based on the 90-day Treasury Bills (published in Exhibit B of FmHA Instruction 440.1, available in any FmHA office). Taxes and assessments, depreciation, management costs, as well as interest costs will be calculated on the current market value of the property for the average inventory holding period. The holding period for suitable inventory farm property will be established by each State as of July 1 each year.

(iii) Adjust the current market value for estimated increases or decreases in value of the property for the holding period specified in paragraph (f)(2) of this section.

(iv) Subtract resale expenses, such as repairs, commissions, and advertising;

(v) Other administrative and attorney's expenses; and

(vi) Add income which will be received after acquisition.

(vii) For a borrower who submits a "new application" as defined in § 1951.906 of this subpart, the value of any collateral that is not in the borrower's possession and that has not been approved or released in writing by FmHA, minus the value of any prior lienholder's interest, will be added to the Net Recovery Value (NRV) of the collateral that is in the borrower's possession or pledged to and/or in the possession of FmHA (that is, bank accounts, stocks and bonds, certificates of deposit and the like). The value of any collateral that is not in the possession of the borrower will be determined by the County Supervisor based upon the best information available about the value of the collateral on or about the time of its disposition. In determining the value of such property, FmHA will use such sources as the publications' Hotline (Farm Equipment Guide) and Official Guide (Tractor and Farm Equipment), sale prices at local public auctions, public livestock sale barn prices, comparable real estate sales, etc. FmHA appraisal forms will be used to record the value of the missing collateral and the basis for the valuation.

(2) Determining costs of involuntary liquidation of collateral for farm loans. The State Directors will analyze the costs of involuntary liquidation within the geographic areas of their jurisdiction and issue a State supplement of estimated costs and average holding time to be used as guidelines by County Supervisors in making calculations of net recovery value under this subsection. Exhibit I will be used in establishing the guidelines contained in the State supplement. Such cost analyses will be carried out in July of each year. State Directors will consult with State Directors of adjoining States, other lenders, real estate agents, auctioneers, and others in the community to gather and analyze the information specified in this subpart.

(g) *Determining net recovery value resulting from primary servicing.* The value of the restructured debt will be based on the present value of payments the borrower would make to the FmHA using any combination of primary loan service programs that will provide a feasible plan. Present value is a calculation concept which assigns a lower current value to dollars received in later years than to dollars received at the present time. County Supervisors will use a discount rate based on 90-day Treasury Bills as of the date the borrower files the application for restructuring. The National Office will publish the 90-day Treasury Bill rate in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(h) *Notification requirements.* (1) If the calculations show that the value of the restructured debt is greater than or equal to the NRV as determined in paragraph (f) of this section, the County Supervisor will forward to the State Director the borrower's Farm and Home Plan and the original printout of the DALR$ calculations. The County Supervisor will certify that the borrower meets all requirements for debt restructuring with the writedown amount specified on the printout. The State Director's authorization to the County Supervisor to proceed with the writedown will be evidenced by the State Director's signature affixed to the original copy of the DALR$ printout returned to the County Supervisor Within 90 days after receiving a complete application the County Supervisor will notify the borrower of the results of the calculations by sending Exhibit F of this subpart, certified mail, return receipt requested, and offer to restructure the debt. A printout of the DALR$ calculations will be attached to Exhibit F.

(i) Exhibit F of this subpart will inform the borrower(s) of FmHA's offer to restructure the debt and other options which may include payment for nonessential assets and negotiation of the appraisal. If the borrower accepts the offer, the County Supervisor will restructure the debt within 45 days after receipt of the written notice of the borrower's acceptance. If the borrower does not respond to Exhibit F within 45 days, or declines FmHA's offer to restructure the debt, the County Supervisor will send Attachments 9 and 10, or 9–A and 10–A, of Exhibit A of this subpart, as applicable. If Attachment 10 or 10–A is not returned within 30 days of the borrower's receipt of the attachments, the account will be accelerated or foreclosed in accordance with § 1955.15 of subpart A of part 1955 of this chapter.

(ii) If the borrower submitted a new application and requests a negotiated appraisal within 30 days of receiving Exhibit F, the negotiation of the appraisal will be completed in accordance with paragraph (i) of this section.

(A) After completing a negotiation of the appraisal, if the debt can be restructured, the County Supervisor will again send Exhibit F to the borrower in accordance with paragraph (h)(1) of this section.

(B) If the negotiated appraisal changes the DALR$ calculations so that the debt cannot be restructured, the borrower will be sent Exhibit E, "Notification of Request For Mediation or Meeting of Creditors and Other Options," in accordance with paragraph (h)(3) of this section. The appraisal cannot be negotiated again and is not subject to appeal.

(2) If the borrower previously returned Attachment 2 or 4 to Exhibit A of this subpart within 60 days, requesting a Farm Debt Restructure and

Conservation Set-Aside Easement Program, by submitting an ASCS photo of the farm showing the portion of the farm and approximate acres to be considered in their request, the County Supervisor will proceed with processing the request for debt relief. The request will be processed as set forth in Exhibit H of this subpart.

(3) If the DALR$ calculations indicate a feasible plan of operation cannot be developed considering all Primary Loan Service Programs, Softwood Timber, or Conservation Set-Aside Easement Programs, the County Supervisor will take the following actions within 15 days from the date of the determination that the borrower's debt cannot be restructured as requested.

(i) Exhibit E, "Notification of Request For Mediation or Meeting of Creditors and Other Options," of this subpart will be sent to the borrower in all cases by certified mail, return receipt requested. A printout of the DALR$ calculations will be attached to Exhibit E.

(A) When the borrower is in a State with a USDA Certified Mediation Program and has creditors other than FmHA, Paragraph I in Exhibit E will be used. Paragraph I tells the borrower that FmHA is requesting mediation with the borrower's creditors in an effort to obtain debt adjustment which would permit the development of a feasible plan of operation. If the borrower submitted a new application, the borrower must respond to Exhibit E ONLY if the borrower wants to request to negotiate the FmHA appraisal and the appraisal was not previously negotiated. FmHA must participate in USDA Certified Mediation Programs whether or not the borrower responds to Exhibit E. Any negotiation of the FmHA appraisal must be completed prior to any mediation.

(B) In States without a certified mediation program, Exhibit E will be sent by certified mail, return receipt requested to inform the borrower about the applicable options which may include a meeting of creditors, payment for nonessential assets and negotiation of the appraisal. Paragraph I of Exhibit E will be deleted. Paragraph II will be used when the borrower has undersecured creditors who hold a substantial part of the borrower's total debt in accordance with this paragraph. The purpose of the voluntary meeting of creditors is to develop a feasible plan. The undersecured debt is therefore not substantial if the County Supervisor determines that the total amount of undersecured debt, even if written down to zero, would not enable the borrower to develop a feasible plan. The County Supervisor will document such determination in the case file, and the County Supervisor will not offer to carry out a voluntary meeting of creditors. The borrower will be informed of additional rights when FmHA sends Attachments 5 and 6, or Attachments 5–A and 6–A, of Exhibit A of this subpart.

(C) Any negotiation of the FmHA appraisal must be completed prior to the meeting of creditors. The borrower will not be offered a negotiation of the FmHA appraisal if it was previously negotiated. If the borrower is offered a voluntary meeting of creditors, and/or a chance to negotiate the FmHA appraisal but does not respond within 30 days, the County Supervisor will send Attachments 5 and 6, or 5–A and 6–A, of Exhibit A of this subpart, as applicable, certified mail, return receipt requested.

(ii) If mediation or the voluntary meeting of creditors is not successful, the borrower will be sent Attachments 5 and 6, or 5–A and 6–A, of Exhibit A of this subpart, as applicable, certified mail, return receipt requested, within 15 days of the unsuccessful mediation or meeting. The DALR$ computer printout will be attached to Attachment 5 or 5–A of Exhibit A of this subpart.

(4) The following notification and processing provisions also apply to buyout as offered in Attachments 5 and 5–A of Exhibit A of this subpart.

(i) Borrowers who applied for Primary and Preservation Loan Service Programs before November 28, 1990, have 45 days after the receipt of the notification of ineligibility for Primary Loan Service Programs to buyout their loans at NRV. Borrowers who submit new applications will have 90 days after the receipt of the notification of ineligibility for Primary Loan Service Programs to buyout their loans at NRV.

(ii) The value of the restructured loan must be less than the NRV to receive buyout.

(iii) FmHA will not provide insured or guaranteed credit for a buyout.

(iv) For borrowers who submit new applications, other assets will be considered in accordance with § 1951.910 of this subpart before offering buyout.

(v) The borrower must have acted in good faith as determined by FmHA and as defined in § 1951.906 of this subpart.

(vi) Prior to the buyout at NRV, the borrower who has real estate security must, as a condition of the sale, enter into a written recapture agreement covering all real estate security. Borrowers who applied for primary and Preservation Loan Service Programs before November 28, 1990, will execute Exhibit C of this subpart, "Net Recovery Buyout Recapture Agreement," for a term of 2 years. Borrowers who submitted new applications will execute Exhibit C–1 of this subpart, "Net Recovery Buyout Recapture Agreement," for a term of 10 years.

(vii) The County Supervisor will process the net recovery buyout payment to the borrower's loan accounts on Form FmHA 451–2, "Schedule of Remittance," as a miscellaneous collection and will input the information to establish an equity record via the FmHA field office computer terminal system.

(viii) A new mortgage or deed of trust will be taken for the best lien obtainable on the real estate that served as security for the FmHA loans. The new mortgage or deed of trust will describe Exhibit C or C–1, as appropriate, and the amount due under the net recovery buyout recapture agreement. The new mortgage or deed of trust will secure repayment of the net recovery buyout recapture agreement.

(ix) The old mortgage or deed of trust will be released in accordance with paragraph (k) of this section.

(x) The County Supervisor will obtain the State Director's authorization for the writeoff of the debt for the buyout in accordance with paragraph (h)(1) of this section for the writedown of debt.

(i) *Administrative appeals and negotiation of appraisals.* (1) If the borrower who applied for primary loan servicing before November 28, 1990, appeals the decision to deny Primary Loan Service Programs, the 45-day period for the borrower to pay FmHA NRV of the security will start on the day the borrower receives the final appeal or review upholding the initial decision. If the borrower who submitted a new application, appeals the decision to deny Primary Loan Service Programs, the 90-day period to pay FmHA NRV will start on the date the borrower receives the final appeal or review upholding the initial decision. Such decision letter will be sent to the borrower by the Hearing Officer or Review Officer certified mail, return receipt requested. The return receipt is to be sent to the address of the County Office which services the loans by the Hearing and/or Review Officer.

(2) If the administrative appeal process results in a determination that the borrower is eligible for debt writedown, the County Supervisor will writedown the loan in accordance with this subpart, taking into consideration the writedown recommendations, if any, of the Appeal/Review Officer. If the administrative appeal process results in a determination that the borrower is ineligible for debt writedown, the borrower will be sent Exhibit K and

Attachment 1 of this subpart, advising the borrower of FmHA's intent to continue processing the application for Preservation Loan Service Programs, as set forth in § 1951.911 of this subpart, and any application for debt settlement in accordance with subpart B of part 1956 of this chapter. If the borrower does not return Attachment 1 of Exhibit K within 15 days of the date that Exhibit K is sent, the County Supervisor will continue to process the borrower's request. The account will not be accelerated or foreclosure will not continue until the borrower has the opportunity to appeal any denial of the Preservation Loan Service and Debt Settlement request. The opportunity to appeal will be provided before acceleration only if the borrower submitted a timely and complete application for Primary Loan Servicing and/or debt settlement. If the borrower returns Attachment 1 of Exhibit K within 15 days of the date Exhibit K is sent, the account will be accelerated or foreclosure will proceed in accordance with § 1955.15 of subpart A of part 1955 of this chapter. When the account is accelerated the borrower will not be considered for further loan assistance under § 1941.14 of subpart A of part 1941 of this chapter. The accelerated borrower also will not be considered for further servicing except in accordance with § 1955.15 of subpart A of part 1955 of this chapter and the notice of acceleration.

(3) If a borrower appeals the current market appraisal completed by FmHA, the borrower may obtain an appraisal by an independent appraiser selected from a list provided by the FmHA County Supervisor. A borrower who submitted a new application may appeal the FmHA appraisal if the borrower has not previously negotiated the appraisal. The appeal may be requested by checking the appropriate block on Attachments 6–A or 10–A of Exhibit A of this subpart. The borrower does not have to exclusively appeal the current market appraisal, but simply must appeal the denial of Primary Loan Service Programs in which the appraisal, as part of the NRV calculation, is relevant. The cost of the independent appraisal must be paid by the borrower. The borrower must provide FmHA a copy of the independent appraisal at the time of the request for an appeal. The borrower will have access to the case file containing the FmHA appraisal as set forth in § 1900.56(a)(2) of subpart B of part 1900 of this chapter. The independent appraisal will be considered by the appeal officer. The independent appraiser must meet at least one of the following qualifications as determined by the FmHA County Supervisor:

(i) Certification by a National or State Appraisal Society.

(ii) If a certified appraiser is not available the appraiser may be one who meets the criteria for certification in a National or State appraisal society.

(iii) The appraiser has recent, relevant documented appraisal experience or training, or other factors clearly establishing the appraiser's qualifications.

(4) A borrower who submits a new application may object to an FmHA appraisal by requesting to negotiate the appraisal. A borrower may request to negotiate the FmHA appraisal one time. All appraisals used in the negotiations must reflect the value of the property as of the same time frame of the FmHA initial appraisal. The borrower may either appeal the FmHA appraisal according to paragraph (i)(3) of this section or negotiate the appraisal in accordance with this paragraph.

(i) In the case of an unfavorable decision by FmHA on a borrower's application for Primary Loan Service Programs, including buyout, the borrower may make a written request to negotiate the FmHA appraisal. The borrower should check the appropriate box on Attachment 2 of Exhibit E of this subpart. If Attachment 2 is not timely returned, the County Supervisor will send the borrower Attachments 5–A and 6–A of Exhibit of this subpart.

(ii) If a borrower wants to object to a favorable restructuring offer made on Exhibit F of this subpart on the basis of the FmHA appraisal, the borrower should return Attachment 2 to Exhibit F of this subpart requesting to negotiate the appraisal. If Attachment 2 to Exhibit F of this subpart is not received by FmHA within 45 days, the borrower's request for Primary Loan Service Programs will be denied and the borrower will be sent Attachments 9–A and 10–A to Exhibit A of this subpart.

(iii) A copy of the borrower's current appraisal, if available, must be returned to the FmHA servicing office with the borrower's request for negotiation (Attachment 2 of Exhibits E or F, as applicable). On Attachment 2 of Exhibits E and F, the borrower can request a list of independent appraisers which will be provided by FmHA in accordance with paragraph (i)(3) of this section. The borrower has 30 days after requesting negotiation to provide FmHA with a copy of their independent appraisal. The independent appraiser does not need to be on FmHA's list of qualified appraisers. The borrower's appraisal, however, must be done by an independent appraiser who is a member of a national appraisal society or organization, and the appraisal must be conducted in accordance with subpart A of part 1809 of this chapter (FmHA Instruction 422.1 available in any FmHA office) and on Form FmHA 440.21 for chattels.

(iv) After receiving the borrower's independent appraisal, the FmHA County Supervisor will give the borrower a list of qualified, independent appraisers from which to select an appraiser for the third appraisal. The borrower will select and contract one appraiser from the County Supervisor's list of qualified appraisers to conduct the third appraisal. The appraiser cannot be the same appraiser that conducted either the FmHA appraisal or the borrower's independent appraisal. The appraiser also must meet the qualifications set out in paragraph (i)(4)(v) or (i)(4)(vi) of this section, as applicable. The borrower will submit to the County Supervisor the original or a copy of the third appraisal and its attachments and the appraiser's bill. The County Supervisor will pay the appraiser one-half of the total cost of the appraiser. The FmHA payment will be processed as a nonrecoverable cost in accordance with the provisions of FmHA Instruction 2024–P (available in any FmHA office). The borrower is responsible for paying the appraiser directly the remaining one-half of the cost of the appraisal.

(v) In those states that have implemented the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331–3351), the appraiser doing the third appraisal must be certified to perform appraisals in the area in which the property is located. The appraiser shall comply with the provisions set forth in the FIRREA. The appraisal report will be prepared in accordance with Sections I and II of the Uniform Standards of Professional Appraisal Practices (USPAP). The USPAP Standards were developed and are periodically updated by the Appraisal Standards Board, of The Appraisal Foundation. Current copies of the Standards can be purchased from: The Appraisal Foundation, 1029 Vermont Avenue, NW., suite 99, Washington, DC 20005.

(vi) In those states which have not implemented FIRREA, the County Supervisor will give the borrower a list of qualified independent appraisers who meet at least one of the following qualifications:

(A) Certification or designation by a National or State Appraisal Society that

requires testing, continuing education and experience as a condition of certification or designation. The appraisal report must conform to subpart A of part 1809 of this chapter (FmHA Instruction 422.1, available in any FmHA office) for real estate, and Form FmHA 440–21 for chattels.

(B) The appraiser has recent, relevant documented appraisal experience or training, or other factors clearly establishing the appraiser's qualifications. The appraisal report must conform to subpart A of part 1809 of this chapter (FmHA Instruction 422.1, available in any FmHA office) for real estate, and Form FmHA 440–21 for chattels.

(vii) Following the completion of the third appraisal, the three appraisals (the FmHA appraisal, the borrower's independent appraisal and the third appraisal done for negotiation) will be compared by the County Supervisor. The two appraisals that are the closest in value will be averaged by the County Supervisor. These appraisals may be reviewed by the borrower, if requested, and the average value will become the final appraised value.

(j) *Processing writedown.* Borrowers who are eligible for Primary Loan Service Programs with writedown will have their loans rescheduled or reamortized in accordance with this subpart. All loan servicing actions approved in connection with the writedown must take place simultaneously. The borrower and County Supervisor will complete Exhibit D to this subpart, "Shared Appreciation Agreement." Exhibit D provides for recapture as specified in § 1951.914 of this subpart of a portion of any appreciation in the value of the real property securing the debt remaining after the writedown. The FmHA DALR$ computer program will be used to determine the notes to be written down.

(1) A separate Form FmHA 1940–17, "Promissory Note," will be used for each note or assumption agreement being reamortized.

(2) A Form FmHA 1940–17 will be completed, signed, and distributed as provided in the FMI.

(3) The loan servicing action date of approval is also the date that will be inserted on the rescheduled or reamortized Form FmHA 1940–17 in accordance with the provisions in the ADPS manual when establishing an equity record.

(4) A Form FmHA 1940–17 may be processed provided the County Office has possession of the original note being reamortized. If the County Office does not have possession of the original note, the County Supervisor will ask the FmHA Finance Office to return the original note so it is in the Gounty Office before Form FmHA 1940–17 is processed.

(5) The FmHA field office will process the reamortization or consolidation via the FmHA field office computer terminal system in accordance with Form FmHA 1940–17, and complete Exhibit D of this subpart.

(6) The original (old) note(s) will be marked "Rescheduled or Reamortized with Writedown Debt" and stapled to the new rescheduled or reamortized promissory note(s) and will be filed in the promissory note file in the operation file. Copies for the borrower(s) case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies will be filed as indicated above.

(k) *Real estate liens.* If the writedown of the borrower's real estate debt results in all debts to FmHA being written down, FmHA real estate liens will be maintained and will not be subordinated to increase the amount of the prior liens during the shared appreciation period. Shared appreciation agreements will be serviced in accordance with § 1951.914 of this subpart. Upon payment by the borrower of net recovery in a buyout, the original mortgage or deed of trust will be released on real estate for the FmHA loans bought out. The notes will be marked "Satisfied at Net Recovery Value" and returned to the debtor or the debtor's legal representative. Net recovery buyout recapture agreements will be serviced in accordance with § 1951.913 of this subpart.

(l) *Non-real estate liens.* If a borrower's FmHA loan(s) were not secured by real estate, there will be no recapture and the borrower will not be required to enter into a recapture agreement. Upon payment by the borrower of the NRV in a buyout, the original security instruments will be released on chattel security for the FmHA loans bought out. These notes will be marked "Satisfied at Net Recovery Value" and returned to the debtor or the debtor's legal representative.

(m) *Notes.* Notes evidencing debts written off as a result of Primary Servicing debt writedown or buyout at NRV will be returned to the debtor or to the debtor's legal representative. The notes will be returned at the end of any recapture period. If there is no recapture period, the notes will be returned when the County Office verifies that the transaction has been recorded in the Finance Office. For a buyout, the original and copies of the notes will be marked "Satisfied by Approved Net Recovery Buyout." For writedown, the original and copies of the notes will be marked "Satisfied by Approved Debt Writedown." If a note is only partially written-down, the note will be returned to the debtor or debtor's 1egal representative when the note is paid in full. The original and copies of such notes will be marked "Satisfied by Approved Partial Writedown."

§ 1951.910 Consideration of borrower's other assets for new applications.

If the County Supervisor finds that a delinquent borrower has other assets that are not serving as collateral for the FmHA debt, the County Supervisor will determine if the assets are nonessential assets as defined in § 1951.906 of this subpart.

(a) *Nonessential assets.* The net recovery value (NRV) of nonessential assets must be considered when the borrower's application is processed for loan servicing in accordance with this subpart. FmHA will not write down or write off any debt or portion of a debt that could be paid by liquidation of nonessential assets, or by payment of the loan value of the assets that could be received from non-FmHA sources. The loan value of the assets will be the same as the NRV of the assets.

(1) *Determining the value of nonessential assets.* The NRV of the nonessential assets is the market value less any prior liens and any selling costs which may include such items as taxes due, commissions and advertising costs. The determination of NRV of nonessential assets does NOT include a deduction for carrying the property in FmHA inventory. The market value of the nonessential assets must be estimated by a current appraisal in accordance with subpart A of part 1809 of this chapter (FmHA Instruction 422.1, available in any FmHA office) for real estate property, and on Form FmHA 440–21, "Appraisal of Chattel Property," (available in any FmHA office) for chattels. If the borrower disagrees with the FmHA appraisal, the borrower may request a negotiated appraisal or appeal the issue in accordance with paragraph 1951.909(i) of this subpart. If the borrower sells the nonessential assets for their fair market value in an arm's length transaction, that value will be used in place of the appraised market value.

(2) *Eligibility.* If the NRV of the nonessential assets is sufficient to bring the delinquent FmHA account current, the borrower is not eligible for Primary Loan Servicing in accordance with this subpart including buyout. The borrower,

instead, will be sent Attachments 5–A and 6–A of Exhibit A of this subpart. The County Supervisor will indicate the value of both the NRV of nonessential assets and FmHA security on Attachment 5–A. The borrower's nonessential assets and their NRVs also will be listed on Attachment 5–A. The borrower will have 90 days to bring the FmHA account current from the date of the receipt of Attachments 5–A and 6–A. If the borrower does not pay current within this time period, the account will be accelerated after all appeal rights have been exhausted. If the NRV of the nonessential assets is not sufficient to bring the FmHA account current, then the nonessential assets will be considered as set out in paragraph (a)(3) of this section.

(3) *Inclusion in NRV.* If the NRV of the nonessential assets is not sufficient to bring the FmHA account current, then FmHA will add the NRV of these assets to the NRV of the FmHA collateral according to § 1951.909(f) of this subpart. If the borrower liquidates the nonessential assets, or obtains a loan against the equity in such assets, and pays FmHA the NRV of the nonessential assets within 45 days of receiving Exhibit E or F of this subpart, as appropriate, then FmHA will recalculate the debt restructuring without considering the NRV of the nonessential assets.

(b) *Essential assets.* Delinquent borrowers must pledge any essential assets unencumbered to FmHA as security in accordance with § 1943.19 of subpart A of part 1943 of this chapter for the FmHA loans to be restructured. These assets will be considered as additional security for the loans as well as the shared appreciation agreement in order to be eligible for the writedown of the FmHA debt. The value of the essential assets will not be included in the NRV at this time. The FmHA lien will be taken at the time of closing the restructured FmHA loans.

§ 1951.911 Preservation loan service programs.

(a) *Leaseback/Buyback.* This section contains the policies and procedures pertaining to the FP Leaseback/Buyback Program. The FP Leaseback/Buyback Program will permit the previous owner of real farm and ranch property, including any off-farm principal residence of the former operator, which was security for a FP loan(s) to have the first opportunity to lease or purchase the leaseback/buyback property from FmHA. Any off-farm residence(s) of the former borrower(s) and/or owner(s), who is not the operator(s) of the farm or ranch property, is not considered leaseback/buyback property. If the previous owner is not interested in leasing or purchasing the property, preference for leaseback/buyback will be given to the spouse and/or child(ren) of the previous owner who are actively engaged in farming (if the previous owner was an individual); and entity members (if the previous owner is an entity that is composed exclusively of members of the same family) who are actively engaged in farming; and after them to the immediate previous family-size operator (lessee). CONACT property that is acquired on or after January 6, 1988, that secured an FmHA loan will be considered for leaseback/buyback under this section. CONACT property acquired prior to January 6, 1988, will also be considered under this section, but only if the former owner/previous operator was not advised of his or her leaseback/buyback rights under FmHA's previous leaseback/buyback regulation. If there is a conflict between leaseback/buyback and FmHA's Homestead Protection program, priority will be given to the application for homestead protection with respect to the lease of the borrower's principal dwelling. The same applicant may be considered for both leaseback/buyback and homestead protection if requested. The applicant can obtain homestead protection under the Homestead Protection Program and the balance of the farm under the Leaseback/Buyback Program. The authorities contained in this section supplement subparts A, B and C of part 1955 of this chapter and provide information that is necessary to administer the leaseback/buyback program. Inventory property which is located within the boundaries of an Indian reservation of a Federally recognized Indian Tribe and the previous owner is a member of the Indian Tribe that has jurisdiction over the reservation in which such real estate is located is treated differently than real property located outside a reservation. See § 1955.66(d) of subpart B of part 1955 of this chapter for further details.

(1) *Notification.* (i) When a borrower(s) becomes at least 180 days delinquent on an FmHA loan(s), the borrower will be sent Exhibit A with Attachments 1 and 2 of this subpart. Sending of this Exhibit and Attachments will be the notice to the borrower of the availability of Primary and Preservation Loan Service and Debt Settlement Programs. If a feasible plan for restructuring the borrower's debt cannot be developed using Primary Loan Service Programs, the borrower will be notified of Preservation Loan Service Programs and other servicing options by sending Attachments 5 and 6 or 5–A and 6–A of Exhibit A of this subpart, as applicable. If a borrower requests an appeal and the adverse decision is not overturned, the borrower does not request an appeal, or fails to pay FmHA the net recovery value of the property, the borrower will be advised by use of Exhibit K with Attachment 1 of this subpart that FmHA will continue with the processing of Preservation Loan Service Programs and Debt Settlement Programs, if appealable, unless the borrower returns Attachment 1 of Exhibit K within 15 days of the date of the exhibit.

(ii) When FmHA acquires real farm and ranch property, including the principal residence of the former operator, which secured an FP loan, the former owner will be sent Exhibit O of this subpart within 30 days from the date of acquisition. The former owner has 180 days from the date FmHA acquired the real farm and ranch property, including any off-the-farm principal residence of the former operator, to apply for leaseback/buyback, unless State laws provide for a longer period. The exhibit will be sent certified mail, return receipt requested. If the former borrower/owner entered into a leaseback/buyback agreement (Exhibit N of this subpart) prior to FmHA acquisition of the real property, and such agreement has not terminated, Exhibit O will not be sent. The notification letter to an owner who is an individual will inform the owner that if the owner is not interested in leaseback/buyback, the owner's spouse or children, if actively engaged in farming, may be eligible for leaseback/buyback. If the farm or ranch was owned by an entity, the stockholders or partners of which are exclusively members of the same family, the notification letter will inform the owner that if the owner is not interested in leaseback/buyback, the entity members who are actively engaged in farming may be eligible for leaseback/buyback. It will be the responsibility of the owner to inform his or her spouse and/or children or the entity members about their possible participation in the leaseback/buyback program and that they must notify the County Supervisor of their intent to participate in the leaseback/buyback program within 190 days from the date of acquisition unless State redemption laws prescribe a longer period. The notification letter sent to the previous owner will also request the previous owner to notify the County Supervisor if the security was operated by a lessee at the time it was taken into inventory and, if so, to notify

the County Supervisor of the name and address of that lessee. If the farm property is located within an Indian Reservation, and the former owner is a member of such Indian tribe, the Indian Tribe will be notified of the potential availability of the farm property for lease or purchase by sending Exhibit B of subpart B of part 1955 of this chapter. The Indian tribe will be notified at the same time as the previous owner.

(iii) If the previous owner provides FmHA with the name of the immediate previous operator (lessee), or if the County Supervisor is aware that the property was leased by the owner and knows the name and address of such immediate previous operator (lessee), the operator will be notified of leaseback/buyback by use of Exhibit P of this subpart. This letter will be sent Certified mail, return receipt requested. The County Supervisor will send Exhibit P of this subpart to the operator (lessee) within 30 days after the 190-day period or applicable period under State redemption laws has expired. The County Supervisor, however, may notify the operator (lessee) prior to the 190-day period after acquisition of the property or applicable period under State redemption laws if the previous owner, spouse and/child (if the former owner was an individual), and entity members (if the former owner is an entity) inform the County Supervisor, in writing, that they are not interested in purchasing or leasing the property. The operator (lessee) will be given 30 days from the date he or she is notified about leaseback/buyback of their intent to participate in leaseback/buyback.

(iv) The rights regarding the lease or purchase of property provided by this section and accorded a person or entity described above may be freely and knowingly waived by such person or entity. Exhibit Q of this subpart will be used by each person or entity that wishes to waive their rights to leaseback/buyback.

(2) *Priority.* (i) FmHA shall give priority for the leaseback/buyback program in the following order:

Priority 1. The immediate previous owner of the acquired property.

Priority 2. If actively engaged in farming:

a. The spouse or child of the previous owner if the previous owner was an individual;

b. If the previous owner was an entity, to the entity members of the corporation, partnership, joint operation or cooperative.

Priority 3. The immediate previous family-size farm operator of the security.

(If the farm property is located within an Indian Reservation and the former owner is a member of such tribe, see § 1955.66(d) of subpart B of part 1955 of this chapter for leaseback/buyback rights of the Tribe.)

(ii) Within each of the foregoing priorities, if there is more than one individual eligible for leaseback/buyback in any category who has indicated an intention, in writing, to the County Supervisor to participate in the leaseback/buyback program (*e.g.*, one individual wants to purchase and the other individual wants to rent), priority within the category will be given to an individual who wants to purchase the leaseback/buyback property, either for cash or by credit sale. There is no preference for a cash sale over a credit sale. If there are two or more individuals in the same priority category who are eligible for leaseback/buyback who both want to purchase (or to lease if no one wants to purchase), the County Committee will make the selection of the lessee and/or purchaser by lot by placing the names in a receptacle and drawing names sequentially. Drawn offers will be numbered and those drawn after the first drawn offer will be held as back-up offers pending sale to the successful offeror. The random selection of the County Committee is not an appealable item for those individuals that are not the successful lessee and/or purchaser.

(iii) If there are individuals in different priority categories who inform the County Supervisor, in writing, of their intention to participate in the leaseback/buyback program, the County Supervisor will first consider the eligibility for leaseback/buyback of individuals in the highest priority in which there is interest before considering individuals in the lower priority. If an individual in a higher priority is eligible, the individuals in the lower priority will be notified by the County Supervisor that an individual with higher priority has been selected.

(iv) The inventory property will not be leased or sold until any appeals are exhausted.

(v) The rights afforded individuals under the leaseback/buyback program will only be offered once after the property comes into FmHA inventory. If a previous owner, previous owner's spouse or child, an entity member (if the previous owner was an entity held exclusively by members of the same family), or immediate previous family-size operator (lessee) leases the property and does not exercise the option to purchase and the lease terminates, no other individuals will be offered the property under the leaseback/buyback program. These individuals, however, may lease or purchase the property when it becomes available for lease or sale in accordance with subparts B and C of part 1955 of this chapter.

(3) *Receiving applications.* (i) Borrowers who return Attachment 2 of Exhibit A of this subpart and a completed application as outlined in § 1951.907 (f) of this subpart, will have their applications processed for Primary Loan Service Programs before considering the application for leaseback/buyback. The County Supervisor will automatically consider the borrower for Preservation Loan Service Programs if the use of Primary Loan Service Programs will not allow the borrower to develop a feasible plan of operation.

(ii) Borrowers who return Attachment 2 of Exhibit A of this subpart must also be the owners of the real property to be considered for leaseback/buyback. Such borrowers will also be advised by Attachment 5 or 5–A of Exhibit A of this subpart, as appropriate, of the availability of Preservation Loan Service Programs.

(iii) Former owners who wish to make application for leaseback/buyback must make application within 180 days or applicable period under State redemption law after the date FmHA acquires the property. Such application will be made as outlined in § 1951.907 (f) of this subpart.

(iv) The spouse or child of a former owner or entity members must make application for leaseback/buyback within 190 days or applicable period under State redemption laws after the date FmHA acquires the property. Such application will be made as outlined in § 1951.907 (f) of this subpart.

(v) Operators must make application for leaseback/buyback within 30 days of receipt of Exhibit N of this subpart. Such application must be made as outlined in § 1951.907 (f) of this subpart.

(4) *Eligibility.* The County Supervisor will determine the applicant's eligibility.

(i) Any applicant for leaseback/buyback who either (1) first applied for primary servicing on or after November 28, 1990, or (2) first applied for leaseback/buyback on or after November 28, 1990, without first applying for primary servicing, and who is also the borrower/former owner, must have acted in good faith by demonstrating sincerity and honesty in meeting agreements set forth on Form FmHA 1962–1, and agreements with FmHA.

(A) If a good faith determination has already been made in connection with the borrower/former borrower's request for primary servicing of his or her loan pursuant to § 1951.909 (c)(2) of this subpart, such determination will be binding on the borrower/former borrower's request for leaseback/

buyback. In such case of a denial of leaseback/buyback when the borrower/former borrower had previously been denied primary loan servicing because of a determination that the borrower/former borrower has not acted in good faith, the denial of leaseback/buyback will not be appealable.

Note: If the lack of good faith determination was made prior to November 28, 1990, for primary servicing, which was based on the sole fact that the borrower disposed of normal income security before October 14, 1988, without FmHA consent, and it has been determined the proceeds were used for essential household and farm operating expenses of which the borrower would have been entitled to a release of income proceeds in accordance with § 1962.17 (b)(2)(iii) and Exhibit E of subpart A of part 1962 of this chapter, such a lack of good faith determination will not be binding for a leaseback/buyback application filed on or after November 28, 1990.

(B) If the borrower/former borrower had not previously been considered for primary servicing and no good faith determination had been previously made, then the County Supervisor will initially determine if the borrower/former borrower acted in good faith, as defined in § 1951.906 of this subpart. Disposal of normal income security prior to October 14, 1988, without FmHA's consent, will not constitute a lack of good faith if the proceeds were used to pay essential household and farm operating expenses and the borrower would have been entitled to a release of income proceeds in accordance with § 1962.17 (b)(2)(iii) and Exhibit E of subpart A of part 1962 of this chapter.

(ii) The previous owner is the individual(s) or entity that held title to the property at the time FmHA acquired the property. The previous owner, as an applicant for leaseback/buyback, may be an operator of larger than a family-size farm and may be a different individual or entity than the former borrower.

(iii) The spouse and child(ren) of the previous owner (if the previous owner was an individual) are next on the priority list. The spouse and/or any child(ren) who apply for leaseback/buyback must have been actively engaged in farming at the time of acquisition of the farm property. The applicant may be an operator of larger than a family-size farm.

(iv) Entity members (if the previous owner was an entity) must be members of the entity which is owned exclusively by members of the same family and must have been actively engaged in farming at the time of acquisition of the farm property. The applicant may be an operator of larger than a family-size farm.

(v) Previous operator must have been the operator (lessee) of the farm property at the time FmHA acquired the farm property from the former owner (lessor) and be an operator of not larger than a family-size farm after execution of any lease or purchase agreement. The applicant does not need to be an FmHA borrower.

(vi) All applicants must meet the application requirements of paragraph (a)(3) of this section.

(vii) If the County Supervisor determines that the applicant is not eligible for leaseback/buyback, the applicant will be advised of appeal rights in accordance with subpart B of part 1900 of this chapter.

(5) *Processing applications prior to acquisition of property.* (i) An owner may apply for leaseback/buyback and/or Homestead Protection at any time before FmHA acquires the owner's property, provided that an application for pre-acquisition leaseback/buyback will not prevent FmHA's continued processing of an acceleration or foreclosure of the account. All applications made for pre-acquisition leaseback/buyback must be in writing. If application is made for both leaseback/buyback and homestead protection, consideration will be given to both options and the borrower will be notified of both decisions simultaneously. Concurrently with the execution of the pre-acquisition leaseback/buyback agreement, the borrower will deliver a completed Form FmHA 1955–1 to FmHA. The leaseback/buyback agreement is subject to the provisions of subpart A of part 1955 of this chapter. If FmHA acquires title to the leaseback/buyback property during the processing of a pre-acquisition leaseback/buyback agreement, processing of the agreement will be terminated and the owner will be given leaseback/buyback rights pursuant to paragraph (a)(1)(ii) of this section.

(A) If the owner has requested leaseback, the County Supervisor will determine the owner can fulfill the terms and conditions of the lease. If the County Supervisor determines that the owner cannot fulfill the terms and conditions of the lease and/or the owner fails to submit the information requested on Exhibit K of this subpart within 15 days of the date which appears on Exhibit K, appeal rights will be given in accordance with subpart B of part 1900 of this chapter. If the County Supervisor determines that the owner can fulfill the terms and conditions of the lease, the County Supervisor and the owner will enter into a Leaseback/Buyback Agreement (Exhibit N of this subpart) to lease the property to the owner if and when FmHA acquires title. The lease will contain an option to purchase the property. A copy of Form FmHA 1955–20, "Lease of Real Property," will be attached to the agreement as an exhibit. The agreement will provide that FmHA's obligation to enter into a lease/sale of the property is contingent on FmHA acquiring fee title to the property. The agreement will contain a provision that if the lease/sale does not close within 2 years from the date of the agreement, the agreement (and FmHA's obligation to lease/sell) will end.

(B) If the owner has requested buyback of the property as a credit sale on eligible rates and terms, the County Committee will determine the owner's eligibility in accordance with subpart A of part 1943 of this chapter and the County Supervisor will determine the feasibility of the proposed operation before entering into the leaseback/buyback agreement. If the County Committee determines that the owner is not eligible or the County Supervisor determines that the owner's proposed operation and purchase is not feasible, and/or the owner fails to submit the information requested on Exhibit K of this subpart within 15 days of the date which appears on Exhibit K, appeal rights will be given in accordance with subpart B of part 1900 of this chapter. If the County Committee determines the owner is eligible for a credit sale on eligible rates and terms and the County Supervisor determines that the owner's proposed operation and purchase is feasible, the County Supervisor will enter into a conditional credit sale with the owner. The following conditions will be inserted on Form FmHA 1955–45, "Standard Sales Contract—Sale of Real Property by the United States:"

"FmHA's obligation to close the sale is contingent on its acquiring title to the security within 2 years from the date of the agreement. FmHA's obligations are contingent on the owner meeting FmHA's credit sale criteria for eligible rates and terms, creditworthiness and repayment ability at the time the credit sale is ready to close."

(C) If the owner has requested buyback of the property as a credit sale on ineligible rates and terms, the County Supervisor will determine eligibility and feasibility before entering into the leaseback/buyback agreement. If the County Supervisor determines that the owner is not eligible, that the purchase is not feasible, and/or the owner fails to submit the information requested on Exhibit K of this subpart, appeal rights will be given in accordance with subpart

B of part 1900 of this chapter. If the County Supervisor determines that the owner is eligible for a credit sale on ineligible rates and terms, when the security is taken into inventory, the County Supervisor will enter into a conditional credit sale with the owner. The following conditions will be inserted on Form FmHA 1955–45:

FmHA's obligation to close the sale is contingent on its acquiring title to the security within 2 years from the date of the agreement. FmHA's obligations are contingent on the owner meeting FmHA's credit sale criteria for creditworthiness and repayment ability at the time the credit sale is ready to close. The credit sale will close as soon as possible after FmHA acquires title to the security and any other contingencies are satisfied.

(D) If the owner has requested buyback of the property by paying cash, the County Supervisor will enter into Form FmHA 1955–45 with the owner subject to the following contingency which will be inserted in Form FmHA 1955–45:

FmHA's obligation to close the sale is contingent on its acquiring title to the property within 2 years from the date of the agreement.

(E) In the event FmHA is not able to obtain title to the property upon the signing of the Leaseback/Buyback Agreement, the borrower is unwilling to voluntarily convey the property and/or FmHA determines it is unable to accept a voluntary conveyance, and FmHA has determined, if applicable, that all State and local laws, ordinances and regulations concerning the creation of any Homestead Protection property as a separate legal parcel have been satisfied, FmHA will continue with the acceleration of the indebtedness and foreclosure of the property. The Leaseback/Buyback Agreement does not obligate FmHA to take the property into FmHA inventory if it is not in FmHA's financial interest to do so.

(ii) If the owner has requested leaseback/buyback of the real property, FmHA may, as a part of an agreement, permit the owner to voluntarily convey the real property and chattels to FmHA and immediately lease or credit sale the real property back to the former owner. FmHA may sell all the chattel property back to the former owner on credit. These agreements are subject to the following items being concluded before completing any transaction:

(A) Based on the market value of the property and FmHA's potential recovery value, it is determined to be in the Government's best interest to acquire title to the property. Exhibit G of subpart A of part 1955 of this chapter will be used to determine if it is in the Government's best financial interest to accept the voluntary conveyance.

(B) Any remaining debt after conveyance of the chattel and of real estate property will be debt settled in accordance with subpart B of part 1956 of this chapter.

(C) The County Committee must determine that the former owner is eligible for any proposed credit sale on eligible rates and terms.

(D) The County Supervisor must determine that the former owner has repayment ability and creditworthiness for a credit sale or sufficient experience, management skills, and financial resources to assure a reasonable prospect of success in the farming operation for leaseback.

(E) If the property contains wetlands, floodplains, and/or highly erodible land, necessary deed restrictions will be placed on the property as set forth in Exhibit M of Subpart G of Part 1940 of this chapter and subparts B and C of part 1955 of this chapter.

(iii) All conveyances of fee title and/or a leasehold interest which involves a voluntary conveyance, leaseback/buyback and/or homestead protection will be executed simultaneously.

(6) *Processing leaseback requests.* The applicant must furnish the necessary financial information as set forth in paragraph 1951.907(f) of this subpart, to assist the County Supervisor in determining if a feasible plan of operation can be developed. If the County Supervisor determines the applicant can meet the terms of the lease and has sufficient experience, management skills and financial resources to assure a reasonable prospect of success in the farming operations, the County Supervisor may approve the lease on Form FmHA 1955–20.

(i) The term of the lease may be from 1 to 5 years. The lessee will select the term of the lease. Leases may be for cash or crop share. If the lessee is able to pay the cash lease payment at the time the lease is executed, a feasible plan is not required.

(ii) All leases under the leaseback/buyback program will contain an option to purchase. Terms of the option will be set forth as part of the lease as a special stipulation in accordance with the FMI for Form FmHA 1955–20. The purchase price (option price) will be the appraised market value at the time the option is exercised as set forth in subpart A of part 1809 of this chapter (FmHA Instruction 422–1) and supported by a current appraisal on Form FmHA 422.1, "Appraisal Report-Farm Tract." The option to purchase may be exercised any time during the term of the lease. All options expire when the lease term ends.

(iii) Leaseback property will be leased for an amount equal to that for which similar properties in the area are being leased or rented (market rent). In no case will inventory property be leased for a token amount. The County Supervisor will make a survey of lease amounts of farms in the immediate area with similar soils, capabilities and income. The amount of the rental will be determined by the County Supervisor. Prior to entering into a leaseback/buyback agreement, the County Supervisor will advise the applicant by letter, of the rent amount. If the leaseback applicant disagrees with the proposed rental, the applicant can appeal in accordance with subpart B of part 1900 of this chapter.

(iv) The lease payments will not be applied toward the purchase price.

(7) *Processing buyback request.* The applicant must furnish the necessary financial information in accordance with § 1951.907(f) of this subpart to assist the County Supervisor in determining if the applicant can meet the terms of any purchase agreement. If the applicant has requested the property to be financed with a credit sale, a determination will need to be made if the applicant has sufficient experience, management skills and financial resources to assure a reasonable prospect of success.

(i) Title clearance and loan closing will be handled in accordance with subpart A of part 1807 of this chapter (FmHA Instruction 427.1) and the terms specified in Form FmHA 1955–49.

(ii) The purchase price will be the appraised market value as set forth in subpart A of part 1809 of this chapter (FmHA Instruction 422.1) and supported by a current appraisal on Form FmHA 422.1.

(iii) The property will be offered on eligible terms (if the purchaser is eligible in accordance with subpart A of part 1943 of this chapter) and a credit sale processed in accordance with subpart C of part 1955 of this chapter or on ineligible terms of not less than ten percent (10%) down payment with the remaining balance amortized over a period not to exceed 25 years. The interest rate will be the current rate set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(iv) If the purchaser is an eligible applicant (in accordance with subpart A of part 1943 of this chapter) and the value of the property is greater than $200,000, the property may be financed with a $200,000 credit sale on eligible terms and the remainder with the applicant's own resources and/or with

participating credit as set forth in subpart A of part 1943 of this chapter. If the value of the farm property is greater than $200,000 and the eligible applicant is NOT able to arrange the necessary financing for the balance over $200,000, FmHA may finance the purchase of the property with a credit sale on ineligible terms of not less than ten percent (10%) down payment with the remaining balance amortized over a period not to exceed 25 years. A credit sale on eligible terms and the remaining balance on ineligible terms will NOT be made to the same applicant to purchase farm property.

(8) *Special provisions.* The County Supervisor must take into consideration the following provisions:

(i) The rights afforded an individual or entity under FmHA's Leaseback/Buyback program are for the total farm property. Farm property will not be subdivided for lease or purchase for such persons or entity. If the property is larger than a family-size farm, and no person or entity exercises leaseback/buyback rights, the property will then be subdivided and sold in accordance with subpart C of part 1955 of this chapter.

(ii) If the inventory property selected for leaseback/buyback is subject to Homestead Protection rights by someone other than the selected individual, FmHA's obligation to enter into the lease or close the sale will be contingent on FmHA's prior compliance with all local laws, ordinances and regulations, if any, governing the subdivision of land. The Homestead Protection property must be a separate parcel. The Homestead Protection property will be excluded from the leaseback/buyback property. If necessary, FmHA will grant and/or retain for the benefit of adjoining property, reasonable easements for ingress, egress, utilities, water rights, etc.

(iii) If the property contains lands that are wetlands and/or floodplains, the prospective lessee or purchaser will be informed by FmHA of its presence and location, along with the USDA restrictions regarding its use, as set forth in Exhibit M of subpart G of part 1940 of this chapter and subparts B and C of part 1955 of this chapter. The provisions of a purchase agreement or a lease agreement for farm inventory property that is "highly erodible land," as determined by the Soil Conservation Service (SCS), must contain, as requirements of the lease or sale, conservation practices specified by the SCS and approved by FmHA as a condition of the lease or sale. If the land is under an Agricultural Stabilization and Conservation Service (ASCS) Conservation Reserve Program (CRP) contract, the purchaser/lessee shall assume the CRP contract. This requirement shall be included as a provision in all leases or sale documents entered into pursuant to the Leaseback/Buyback Program.

(iv) In the event of any conflict between any provisions of the FmHA Leaseback/Buyback Program, as outlined in this section and any provisions of State law providing a right of first refusal to the owner of farmland or the operator of a farm before the sale or lease of land to any other person, such provision of the State law shall prevail. State supplements will be prepared with the assistance of OGC as necessary, to provide guidance to FmHA officials as to how to comply with the State laws. State supplements will be submitted to the National Office for post-approval in accordance with FmHA Instruction 2006–B (available in any FmHA office).

(v) Denial of applications for or disputes over terms and conditions of a lease or purchase agreement under the leaseback/buyback program, are appealable pursuant to subpart B of part 1900 of this chapter. Disputes over appraisals for leaseback/buyback will be handled in accordance with § 1951.909 (i)(3) or (i)(4) of this subpart, as applicable, and § 1900.53 (c) or (d) of subpart B of part 1900 of this chapter, as applicable.

(vi) For additional guidance on the acquisition, management and sale of inventory farm property (CONACT property), the County Supervisor should refer to subparts A, B and C of part 1955 of this chapter.

(b) *Homestead Protection.* This paragraph contains the policies and procedures pertaining to the FP Homestead Protection Program. The Homestead Protection Program is a "Preservation Loan Service Program" as set forth in this Subpart. A borrower or former borrower who had or has a FP loan secured by the real property containing the dwelling owned by the borrower and used as the borrower's principal residence may apply for Homestead Protection before or after FmHA acquires the property. Farm real property that is in FmHA inventory as of the effective date of this regulation or is acquired in the future that secured a FP loan to individuals or entities will be considered for Homestead Protection as set forth in this subpart. If there is a conflict between applicants for Leaseback/Buyback (see paragraph 1951.911 (a)) and Homestead Protection, priority will be given to the application for Homestead Protection. An applicant can apply for both Homestead Protection and Leaseback/Buyback at the same time. The applicant can obtain the Homestead Protection property under the Homestead Protection Program and the balance of the farm under the Leaseback/Buyback Program.

(1) *Purpose.* The purpose of the Homestead Protection Program is to permit a borrower or former borrower who is eligible for Homestead Protection to retain their dwelling through a lease and/or purchase. Such lease and/or purchase could permit a borrower or former borrower to have a home which could be a headquarters which could provide an opportunity to continue to farm and reestablish a feasible farming operation.

(2) *Notification and Processing.* When a borrower(s) becomes at least 180 days delinquent on an FmHA loan(s), the borrower(s) will be sent Exhibit A with Attachments 1 and 2 of this subpart. Sending of this Exhibit and Attachments will be the notice to the borrower of the availability of Primary and Preservation Loan Service and Debt Settlement Programs. If a feasible plan for restructuring the borrower's debt cannot be developed using Primary Loan Service Programs, the borrower will be notified of Preservation Service Programs and other servicing options by sending Attachments 5 and 6, or 5–A and 6–A, of Exhibit A of this subpart, as applicable. If the borrower requests an appeal and the adverse decision is not overturned, the borrower does not request an appeal or fails to pay FmHA the net recovery value of the property, the borrower will be advised by the use of Exhibit K with Attachment 1 of this subpart, that FmHA will continue with the processing of Preservation Service Programs and/or Debt Settlement Programs, if applicable. A borrower who desires to apply will request homestead protection in accordance with the provisions of § 1951.907 of this subpart before the property is acquired and paragraph (b)(2)(iii) of this section after the property is acquired. A borrower who desires to participate in the program must request Homestead Protection by applying in accordance with § 1951.907 (f) of this subpart or paragraph (b)(2)(iii) of this section. The borrower will be allowed to retain possession and occupancy of the homestead protection property while an application for Homestead Protection is being processed. A borrower who meets the eligibility requirements in paragraph (b)(3) of this section will be permitted to retain possession of the homestead in accordance with paragraph (b)(2)(ii) of this section before title is acquired or

under a lease with an option to purchase after title to the property is acquired.

(i) *General.* (A) The homestead protection property will include the borrower's principal residence and not more than 10 acres of adjoining land that is used to maintain the borrower's family and a reasonable number of farm service buildings located on land adjoining the residence which are useful to the occupants of the dwelling.

(B) The County Supervisor will review the borrower's proposed homestead protection property and will make a physical inspection of the property, if necessary. If the County Supervisor does not agree with the proposed shape or size of the property, the County Supervisor and borrower will agree on an alternate size and shape for the property.

(C) If the borrower and the County Supervisor cannot agree on the proposed shape and size of the property, the County Supervisor will make the determination. The borrower may appeal pursuant to subpart B of part 1900 of this chapter.

(D) When the size and shape of the property is agreed upon and the borrower has been found eligible by the County Supervisor, the County Supervisor will request a licensed surveyor to survey the property, have a legal description prepared, and mark the property lines with permanent type markers.

(E) Appraisals will be completed in accordance with paragraphs (b)(7) and (b)(8)(ii)(B) of this section.

(ii) *Processing Homestead Protection Before FmHA Acquires Title.* (A) A borrower will be considered for eligibility for Homestead Protection when it is determined that the Primary Loan Service Programs cannot help. Exhibit K with Attachment 1 of this subpart will be sent to the borrower. The borrower must return Attachment 1 and indicate the buildings and land to be included in the request for homestead protection in order to continue the processing of his/her application. If the County Supervisor determines the borrower is eligible for Homestead Protection, the County Supervisor and the borrower will enter into a Homestead Protection Program Agreement (Exhibit L of this subpart) to lease the Homestead Protection property to the borrower if and when FmHA acquires title. A copy of Form FmHA 1955–20, "Lease of Real Property," will be attached to the Agreement as an Exhibit.

(B) Concurrently with the execution of the pre-acquisition Homestead Protection Program Agreement, the borrower will deliver a completed Form FmHA 1955–1 to FmHA. The Homestead Protection Program Agreement is subject to the provisions of Subpart A of Part 1955 of this chapter. If FmHA acquires title to the Homestead Protection property during the processing of a pre-acquisition Homestead Protection Agreement, processing of the agreement will be terminated and the owner will be given Homestead Protection rights pursuant to paragraph (b)(2)(iii) of this section.

(C) FmHA's obligation to lease the dwelling to the borrower will also be contingent on FmHA's prior compliance with all State and local laws, ordinances and regulations governing the subdivision of land. The Agreement will contain a provision that if FmHA cannot satisfy the foregoing conditions within 2 years from the date of the Agreement, the Agreement (and FmHA's obligation to lease with option to purchase) will terminate. In the event an Agreement has been entered into, title to the property has not been conveyed to FmHA, (or FmHA has determined it is not in its financial interest to accept title) and FmHA has determined that all State and local laws, ordinances and regulations governing the subdivisions of property have been complied with, FmHA will continue with the acceleration and foreclosure of the property. It is not the intent of the two-year term of the agreement to limit FmHA's ability to foreclose on the property provided all the terms of the agreement have been met except that the title has not been conveyed to FmHA.

(iii) *Application for Homestead Protection After FmHA Acquires Title.* When FmHA acquires title to the farm property, the borrower will be sent Exhibit M of this subpart, by certified mail, return receipt requested, within 30 days from the acquisition date. The borrower must request Homestead Protection by notifying the County Supervisor in writing not later than 90 days after FmHA acquires the property. The borrower must give the County Supervisor the information set forth in § 1951.907(f) of this subpart and indicate the buildings and land to be included in the request for Homestead Protection.

(iv) *Lease with Option.* A lease with an option to purchase will be entered into with an eligible borrower on Form FmHA 1955–20 after FmHA acquires title to the property. Form FmHA 1955–20 will be completed in accordance with § 1951.911(b)(8) and the FMI.

(3) *Eligibility.* The County Supervisor will make the determination on eligibility. In order to qualify for homestead protection the borrower must meet the following eligibility requirements:

(i) An applicant for Homestead Protection must be an individual who is or was personally liable for the Farmer Program loan that was secured in part by the Homestead Protection property. The applicant must also be or have been the owner of the Homestead Protection property. The Farmer Program loan could have been made to an individual or to an entity, as long as the applicant for homestead protection was a member of the entity and was personally liable for the Farmer Program loan. A member of an entity who is or was personally liable for a Farmer Program loan that is or was secured by the homestead protection property is considered an owner for homestead protection purposes.

(ii) When more than one member of an entity was personally liable for a Farmer Program loan, each such member who possessed and occupied a separate dwelling as his or her principal residence, on property that is or was security for a Farmer Program loan, may apply separately for homestead protection of their individual dwellings.

(iii) The applicant and any spouse must have received from the farming or ranching operations gross farm income reasonably commensurate with the size and location of the farm and reasonably commensurate with local agricultural conditions (including natural and economic conditions) in at least 2 calendar years during the 6-year period preceding the calendar year in which the application is made. For the purpose of this paragraph (b)(3)(iii) and paragraph (b)(3)(iv) of this section, income from farming or ranching operations will include rent paid to the borrower by a lessee of agricultural land during any period in which the borrower, due to circumstances beyond his or her control, such as economic, natural disaster or health problems, was unable to actively farm that property. In determining whether or not the gross farm income was reasonably commensurate with the farm size and location and local agricultural conditions, the borrower's records will be analyzed. When the borrower applies for homestead protection the borrower will give the County Supervisor at least 2 calendar years of records of planned and actual gross farm income for the 6-year period preceding the calendar year in which the application is made. If such records do not exist, they may be developed by the applicant and County Supervisor from information relating to yields, expenses and prices found in the borrower's

County Office case file, ASCS records or other reliable sources.

(iv) The applicant and any spouse must have received from the farming or ranching operations at least 60 percent of the gross annual income of the borrower and any spouse of the borrower in at least 2 of the 6 calendar years preceding the calendar year in which the application for Homestead Protection is made.

(v) The applicant must have continuously occupied the Homestead Protection property during the 6-year period preceding the calendar year in which the application is made, unless the applicant had to leave the property for a period of time not to exceed 12 months during the 6-year period due to circumstances beyond the borrower's control, such as illness, employment or conditions that made the dwelling uninhabitable.

(vi) The applicant must have sufficient income to make rental payments for the term of the lease and the ability to maintain the property in good condition. The applicant must also agree to all the terms and conditions set forth in paragraph (b)(8) of this section and in Form FmHA 1955–20.

(4) *Transfer of Homestead Protection Rights.* The applicant's rights to Homestead Protection and rights under the Agreement or lease entered into pursuant to this section are not transferable or assignable by the applicant or by operation of law, except that in the case of death or incompetency of the applicant, such rights and agreements shall be transferable to the spouse of the applicant if the spouse agrees to comply with the terms and conditions of the lease by executing a new lease on the same terms and conditions.

(5) *Appeal Rights.* If the County Supervisor determines that the applicant is not eligible for Homestead Protection or the lease is terminated because the lessee fails to make lease payments as scheduled or to maintain the property in good condition, the County Supervisor will notify the applicant or lessee in writing of the decision and give the opportunity to appeal in accordance with subpart B of part 1900 of this chapter. The property will not be leased or sold until the appeal is concluded. If more than one applicant is found eligible for homestead protection, but the County Supervisor grants homestead protection to only one applicant, the successful applicant will be notified that he or she will be required to participate in any appeal hearing arising out of the County Supervisor's decision or lose the right to seek review if the hearing officer reverses the County Supervisor's decision selecting the applicant for homestead protection.

(6) *Property Requirements.* (i) The proposed Homestead Protection property tract must meet all requirements for the division of the Homestead Protection property into a separate legal lot as required by State and local laws. All environmental considerations required under the provisions of Subpart G of Part 1940 of this chapter will be complied with.

(ii) Costs for a survey, legal description or other service needed to establish, appraise, define or describe the homestead protection property as a separate tract, will be paid for by FmHA. Such costs will be handled in accordance with § 2024.753(c) of FmHA Instruction 2024–P (available in any FmHA office). No repairs or improvements will be paid for by FmHA except as provided for in § 1955.64(a) of subpart B of part 1955 of this chapter.

(iii) If necessary, FmHA will grant and/or retain for the benefit of adjoining property reasonable easement(s) for ingress, egress and utilities, water rights, etc.

(7) *Appraisal.* The current market value of the Homestead Protection property shall be determined by an independent appraisal made within six months from the date of the borrower's application for Homestead Protection. The applicant will select an independent real estate appraiser from a list of appraisers approved by the County Supervisor.

(i) The County Supervisor will develop and maintain, in the County Office operational file, a list of independent appraisers. See § 1951.909(i) (3) and (4) of this subpart.

(ii) The cost of such an appraisal will be handled in accordance with paragraph (b)(6)(ii) of this section.

(iii) Independent appraisals are appealable or may be negotiated in accordance with § 1951.909(i) of this subpart.

(8) *Terms of the Lease and Exercising the Option.* (i) All leases will have an option to purchase. Any reference to a lease for Homestead Protection purposes will mean a lease with an option to purchase. The lease will be offered with an option to purchase on Form FmHA 1955–20 and will be for a period of not more than 5 years as requested by the applicant. A lease of less than 5 years may be extended, but not beyond 5 years from the date of the beginning of the term of the original lease.

(A) The amount of the rent will be based upon equivalent rents charged for similar residential properties in the area in which the dwelling is located. The County Supervisor will document in the case file a sufficient number of equivalent rents charged in the area for such properties to support the lease amount.

(B) Lease payments will be retained by the Government and remitted in accordance with FmHA Instruction 1951–B (available in any FmHA office).

(C) Failure to make lease payments as scheduled or to maintain the property in good condition shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling retention property under this section. As soon as a lease payment is delinquent, the lessee will be notified in writing that if the payment is not received within 30 days from the date of the notification, the lease and all rights of the lessee to possession and occupancy of the property including the right to exercise the option to purchase will be terminated. The County Supervisor will notify the lessee in writing of the termination of the lease and option and give the lessee the opportunity to appeal the decision pursuant to subpart B of part 1900 of this chapter. The lessee will continue to occupy the dwelling under the terms of the lease during an appeal of the termination decision. FmHA will comply with all applicable State and local laws governing eviction from residential property.

(D) Any interference by the lessee with the Government's efforts to lease or sell the remainder of farm inventory property shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property including the right to exercise the option to purchase. This stipulation will be added to the lease. The act of an applicant exercising his or her rights under the leaseback/buyback program is not considered as interfering with the Government's efforts to lease or sell the property.

(ii) Exercising the Option to Purchase.

(A) The lessee may exercise the option in writing at any time prior to the expiration of the lease by delivering to the FmHA County Supervisor a signed, written statement notifying FmHA that the lessee is exercising the option to purchase the property. Failure to exercise the option within the lease period will end the lessee's rights under the option to purchase.

(B) When the lessee exercises the option in the lease to purchase the property, the purchase price will be the current market value of the homestead protection property. The current market value will be determined by an appraisal in accordance with paragraph

(b)(7) of this section providing the appraisal is not more than 1 year old. If the appraisal is more than 1 year old, the current market value will be determined by a new appraisal requested in accordance with paragraph (b)(7) of this section.

(C) The homestead protection property may be sold for cash or financed with a credit sale. At the time the lessee exercises the option the lessee must notify the County Supervisor if he or she wants to purchase the property for cash or finance it through a credit sale from FmHA.

(D) If a credit sale is involved, the applicant must furnish the County Supervisor the information set forth in § 1951.907(f) of this subpart to assist in determining whether or not the applicant has adequate repayment ability.

(9) *Rates and Terms for a Credit Sale.* Terms for a credit sale of Homestead Protection property when the lessee is exercising the option to purchase and has qualified for a credit sale will not exceed 35 years with equal amortized monthly installments. No down payment will be required. The interest rate for Homestead Protection will be as set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(10) *Closing.* A credit sale will be closed in accordance with Subpart C of Part 1955 of this chapter.

(11) *Conflict with State Law.* In the event of a conflict between a borrower's Homestead Protection rights and any provisions of the law of any State relating to the right of a borrower to designate for separate sale or redeem part or all of the property securing a loan foreclosed on by a lender, such provision of State law shall prevail. A State supplement will be prepared as necessary to supplement paragraph (b) of this section.

(12) *State Supplements.* State supplements will be prepared with the assistance of OGC, as necessary, to comply with State laws to provide guidance to FmHA officials. State supplements will be submitted to the National Office for post approval in accordance with FmHA Instruction 2006–B (available in any FmHA office).

(c) *Servicing homestead protection loans.* Homestead protection loans will be serviced as set forth in Subpart A of Part 1965 of this chapter.

§ 1951.912 Mediation.

(a) *States with a USDA certified mediation program.* The FmHA is required to participate in USDA Certified State Mediation Programs. The purpose of mediation is to participate with farm borrowers, and their creditors, in an effort to resolve issues necessary to overcome tha borrower's financial difficulties. Any negotiation of an FmHA appraisal pursuant to § 1951.909(i) of this subpart will be completed prior to mediation.

(1) FmHA shall participate in a USDA certified mediation program under the same terms and conditions as other creditors. Decisions will not be binding on FmHA unless approved by the representative assigned by FmHA in accordance with paragraph (a)(4) of this section.

(2) Mediation fees, if charged to FmHA, will be paid by completing Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," and submitting Form FmHA 2024–1, "Miscellaneous Payment System," for payment as a non-recoverable cost in accordance with FmHA Instruction 2024–P (available in any FmHA office).

(3) Failure of creditors and/or borrowers to participate in mediation will not preclude FmHA from granting Primary Loan Service programs to assist borrowers.

(4) The FmHA State Director will designate a representative to represent FmHA in the mediation process. Authorities of the representatives can vary from complete authority to act for FmHA, to a requirement for review and concurrence by the State Director or designee prior to approving a mediation agreement. The State Director will set forth in writing the specific authority delegated to the designated representative.

(5) The FmHA State Director will arrange for adequate training for representatives designated to represent FmHA in mediation.

(6) When mediation is not successful in resolving the borrower's financial difficulty, the County Supervisor will send the borrower Attachments 5 and 6, or 5–A and 6–A, of Exhibit A of this subpart, as applicable.

(7) The FmHA State Director will develop a State supplement that describes how FmHA will participate in the State Mediation Program. In developing the State supplement the State Director should confer with the State Attorney General's Office, farm organizations that are interested in the development of the State's Certified Agricultural Loan Meditation Program, and Departments of State Governments to ensure that all interested parties have input on the content of the State supplement. The State Director will consult with the Regional OGC as necessary to develop the State supplement. State supplements will be submitted to the National Office for post approval in accordance with FmHA Instruction 2006–B (available in any FmHA office).

(b) *States without a certified mediation Program.* To service those borrowers in States where there is no USDA Certified Mediation Program established, the State Director will provide the means of conducting a voluntary meeting of creditors, either with a mediator or a designated FmHA representative. "Creditors," for purposes of this paragraph, means all the borrower's undersecured creditors holding a substantial part of the borrower's debt in accordance with § 1951.909(h)(3)(i) of this subpart. State Directors are encouraged to contract for qualified mediators within their jurisdictional areas to conduct the voluntary meeting of creditors in an effort to help farmers resolve their financial difficulty. The National Office will provide the State a list of qualified mediators for contracting purposes. Any negotiation of an FmHA appraisal pursuant to § 1951.909(i) of this subpart will be completed prior to meeting with other creditors.

(1) When a mediator is available, the County Supervisor will assist the meditator in scheduling a meeting with the borrower and all of the borrower's creditors and will encourage them to participate in such a meeting. The mediator will be responsible for conducting the meeting in accordance with accepted mediation practices and to develop an Agreement to assist the farmer in resolving their financial difficulties.

(2) When a mediator is not available, the State Director will designate an FmHA representative to conduct a meeting of creditors and attempt to develop a plan with borrowers and their creditors that will assist the borrowers to resolve their financial difficulty. The State Director will designate a representative not previously involved in servicing the borrower's account. State Directors will designate a representative, or FmHA employees who have demonstrated good human relations skills and ability to resolve problems and settle disputes.

(3) Duties of Designated FmHA Representative For Conducting a Meeting of Creditors. The representatives will:

(i) Schedule a meeting between the borrower and the borrower's creditors and encourage them to participate in such a meeting.

(ii) State that the parties understand that the representative is neutral and does not represent any of the parties.

(iii) Inform the borrower and creditors concerning FmHA programs available to assist the borrowers.

(iv) Encourage the parties to utilize all available means to assist the borrower to overcome the financial difficulty.

(v) Advise, counsel, and facilitate the development of a debt restructure agreement between the borrower and creditors which will permit the borrower to remain in farming.

(vi) Review with the parties any proposed solution to determine if it can be effectively implemented and to help the parties understand the consequences of the proposed solution.

(vii) Review the obligations of the participants, including but not limited to the following:

(A) The maintenance of confidentiality.

(B) Promote good faith discussions in an effort to reach agreement.

(viii) Develop a written document that specifies the agreements reached in the meeting. The agreement will be signed by all parties with authority to approve the agreement for the participating creditors. When signed, copies will be distributed to the borrower and participating creditors. A copy will be filed in the borrower's County Office case file.

(4) If agreements are reached which will permit the development of a feasible plan of operation the County Supervisor will proceed with processing and approval of the borrower's request for Primary Loan Servicing.

(5) When the FmHA representative has exhausted all efforts to develop an agreement between the borrower and creditors and an agreement cannot be reached, the FmHA representative will report the results of this meeting to the State Director by memorandum. Copies of the memorandum will be sent to the borrower and all creditors participating in the meeting. When the County Supervisor receives a copy of this memorandum indicating an agreement cannot be reached, Attachments 5, Notice of Intent to Accelerate or Continue Acceleration and Notice of Borrower's Rights, and 6, Response to Notice Informing Me of FmHA's Intent to Accelerate or Continue With Acceleration and Notice of My Rights, or 5–A, Notice of Intent to Accelerate or Continue Acceleration and Notice of Borrowers' Rights, (to be used for applications submitted on or after November 28, 1990) and 6–A, Response To Notice Informing Me of FmHA's Intent To Accelerate Or Continue With Acceleration and Notice of My Rights, (to be used for applications submitted on or after November 28, 1991) of Exhibit A of this subpart, as applicable, will be sent to the borrower.

(6) State Directors will provide the necessary training to insure that the FmHA representative has the necessary skills to effectively conduct a voluntary meeting between a borrower and creditors which may result in reaching an agreement.

(7) Failure of creditors to participate in a voluntary meeting of creditors will not preclude FmHA from using debt writedown if it would result in a greater net recovery to FmHA than liquidation. Whenever the net recovery to FmHA will be greater using the writedown than to go through foreclosure, FmHA will use the writedown, regardless of the actions of the other creditors. Voluntary meetings of creditors cannot delay consideration of a borrower for Primary Loan Service Programs, except with the consent of the borrower.

(8) If the borrower does not participate in the voluntary meeting of creditors without good cause, and a feasible plan of operation cannot be developed the County Supervisor will send the borrower Attachments 5 and 6, or 5–A and 6–A, of Exhibit A of this subpart, as applicable.

§ 1951.913 Servicing Net Recovery Buyout Recapture Agreements.

(a) *Death or retirement.* If upon the death or retirement of a borrower who submitted a "new application," as defined in § 1951.906 of this subpart, the borrower executed Exhibit C–1 of this subpart, and transferred title of the borrower's real estate security to a spouse or child who is actively engaged in farming on the property, then the transaction will not be treated as a "sale" or "conveyance" under the recapture agreement. The borrower's spouse or child, however, must assume the full liability of the borrower under the provisions of the borrower's Net Recovery Buyout Recapture Agreement and real estate lien instrument in accordance with instructions from OGC.

(b) *Recapture receivable accounts.* The Finance Office will credit the borrower's account with the amount paid by the borrower. An equity record will be established in accordance with the provisions of the ADPS manual.

(1) For borrowers who applied for Loan Servicing and Preservation Service Programs before November 28, 1990, and executed Exhibit C of this subpart, "Net Recovery Buyout Recapture Agreement," a recapture receivable account will be established in an amount equal to the difference between the NRV and the market value of the real estate security as of the date the net recovery buyout agreement was signed by the borrower.

(2) For borrowers who submit "new applications," as defined in § 1951.906 of this subpart, and execute Exhibit C–1 of this subpart, an equity record will be established in an amount equal to the amount of debt secured by real estate that was written off as of the date the "Net Recovery Buyout Recapture Agreement," Exhibit C–1 of this subpart, was signed by the borrower. This is the maximum amount that can be recaptured.

(c) *Review by County Supervisor.* The County Supervisor will establish a follow up to review the County real estate records every 12 months starting from the date of the Net Recovery Buyout Recapture Agreement to determine if the borrower has sold or conveyed the real estate property covered by the agreement. Annual reviews to be conducted must be posted on the borrower's Form FmHA 1905–1, "Management System Card—Individual," for follow-up purposes. The results of the review will be recorded in the borrower's county office case file. These reviews will end at the expiration of the agreement. If there is no recapture due, then the County Supervisor will proceed in accordance with paragraph (g) of this section.

(d) *Notification of recapture due.* If the County Supervisor determines that the borrower has sold the real estate, the borrower will be notified in writing, certified mail, return receipt requested, of the following:

(1) The amount of recapture due in accordance with Exhibits C or C–1 of this subpart, as applicable. The County Supervisor will notify the Finance Office to establish an equity receivable account in accordance with the provisions of the ADPS manual.

(2) The date the recapture is due (not to exceed 30 days from the date the Notice of Recapture Letter is received by the borrower.)

(3) If the borrower fails to pay any amount due to FmHA as the result of a sale of the property, the account will be accelerated as set forth in § 1955.15 of subpart A of part 1955 of this chapter.

(e) *Processing payments.* The County Supervisor will issue Form FmHA 451–2, "Schedule of Remittance," for all the payments received under the Recapture Agreement. The following should be recorded in the body of the form: "Equity Receivable Payment."

(f) *Release of liability.* When the total amount due under the agreement has been paid and credited to the borrower's account, the borrower will be released from personal liability. The recapture

agreement will be marked "Recapture Agreement Satisfied" and returned to the debtor or to the debtor's legal representative. In such cases, the security instrument(s) will be released of record in accordance with subpart A of part 1965 of this chapter.

(g) *No recapture due:* If the County Supervisor determines there is no recapture due, the County Supervisor will notify the Finance Office in accordance with the provisions of the ADPS manual that no further recapture is due and that the borrower's equity record will be closed. Exhibit C or C-1 of this subpart, as applicable, will be terminated and security instruments will be processed as set forth in paragraph (f) of this section.

§ 1951.914 Servicing of Accounts Restructured Under Primary Loan Service Programs.

(a) Borrowers whose accounts have been restructured will be serviced as provided for in § 1951.909 of this subpart.

(1) The County Office will input, via the FmHA field office terminal system, an equity record. The County Office will process this transaction in accordance with the provisions in the ADPS manual and the information in Exhibit D, "Shared Appreciation Agreement," of this subpart.

(2) The borrower's account will be credited with the amount of debt written down.

(3) Six months prior to the end of the Shared Appreciation Agreement, not to exceed 10 years, the Finance Office will notify the County Supervisor of the expected final date of the recapture.

(4) The County Supervisor will establish a follow-up on Form FmHA 1905-1, "Management System Card—Individual," to review the County real estate records every 12 months starting from the date of the Shared Appreciation Agreement to determine if the borrower has sold the real estate property covered by the Agreement or transferred title to such property. The results of the review will be recorded in the borrower's County office case file.

(5) If the County Supervisor determines that the borrower has sold the real estate or transferred title, an appraisal of the real estate will be completed. If the appraisal indicates that there is a positive value between the current market value at the time the Shared Appreciation Agreement was signed and the current market value at the time the borrower conveyed the real estate or transferred title, the borrower will be notified in writing, certified mail, return receipt requested, of the following:

(i) The amount of recapture due.

(ii) The date the recapture is due (not to exceed 30 days from the date the Notice of Recapture Letter is received by the borrower).

(iii) Appeal rights as set forth in subpart B of part 1900 of this chapter.

(iv) If the borrower disagrees with the FmHA appraisal, the borrower may request to negotiate the appraisal in accordance with § 1951.909(i) of this subpart or appeal the appraisal. If the borrower appeals the current market appraisal, the cost of a new appraisal will be shared equally by FmHA and the borrower. The borrower will select an appraiser from the list of FmHA approved appraisers. The selection of the appraiser must be made by the borrower within 15 days of the receipt of the recapture due letter.

(v) Any appeal or request for negotiation under this section will be concluded prior to any further action by FmHA.

(vi) If the borrower does not appeal or request negotiation within 30 days or does not pay the amount, FmHA will proceed as set forth in § 1951.907(e) of this subpart.

(b) Servicing Shared Appreciation Agreements. Recapture of any appreciation will take place at the end of the term of the Agreement, or sooner, if the following occurs:

(1) On the conveyance of the real estate security by the borrower; however, transfer of title to the spouse of the borrower on the death of such borrower, will not be treated by FmHA as a conveyance. Recapture will take place if the surviving spouse conveys the subject property, or at the end of the term of the recapture agreement, whichever comes first.

(2) On the repayment of the loans;

(3) If the borrower/spouse ceases farming operations; or

(4) Five months prior to the end of the term of the Shared Appreciation Agreement. The County Supervisor will inform the borrower by letter of the following:

(i) The date the recapture is due.

(ii) The borrower must select an FmHA approved appraiser from the list provided to establish the current market value of the property subject to recapture.

(iii) The cost of such appraisal is to be shared equally by FmHA and the borrower.

(iv) The borrower must inform FmHA of the appraiser selected within 15 days from the date of the letter indicated in paragraph (a)(5)(iv) of this section.

(c) Procedures for Recapture at the End of Shared Appreciation Agreement:

(1) The borrower will be notified by certified mail, return receipt requested, of the recapture amount due and payable. This notification letter will also include the recapture calculations and appeal rights. If the borrower cannot obtain satisfactory financing to pay the recapture, the amount to be recaptured will be identified on a new promissory note as a Non-Program loan at ineligible rates and terms. If the borrower is financially capable of paying the recapture, as determined by the FmHA County Committee and the payment is not made by the borrower within 180 days from the date due, the borrower's account will be treated as delinquent and FmHA will send Attachments 1 and 2 of Exhibit A of this subpart. The FmHA field office will input via the field office terminal system the information to establish a recapture receivable account in the Finance Office.

(2) The County Supervisor will issue Form FmHA 451-2, "Schedule of Remittance," for all the payments received under the Recapture Agreement. The following should be recorded in the body of the form: "Equity Receivable Payment."

(3) When the full amount of the shared appreciation and the remaining FmHA indebtedness have been paid and credited to the borrower's account, the borrower will be released from personal liability. Notes evidencing debts and shared appreciation agreements will be marked "Paid in Full" and returned to the debtor or to the debtor's legal representative. In such cases, the security instrument(s) will be released of record in the usual manner.

(4) If the County Supervisor determines there is no recapture due, the Finance Office will be notified in accordance with the provisions of the ADPS manual that no further recapture is due and that the borrower's equity record should be closed.

§ 1951.915 [Reserved]

§ 1951.916 Exception authority.

The Administrator or delegate may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected. The Administrator will exercise this authority upon request of the State Director with recommendation of the appropriate Program Assistant Administrator, or upon request initiated by the appropriate Program Assistant

Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1951.917 FmHA Debt Restructuring Support Teams (DRST).

(a) *State Office DRST.* Each State Director shall form DRSTs to be deployed when unusually large numbers of Primary and Preservation Servicing and Debt Settlement applications are received. DRSTs shall assist in expediting the processing of both Primary and Preservation Loan Service Program Applications.

(1) State Directors shall use the DRSTs formed in their State(s) and all other FmHA personnel within their State(s) in processing Primary and Preservation Loan Service Applications. If additional help is needed beyond that available in the State, including the use of overtime, temporary personnel, and/or private contractors, the State Director shall advise the National Office of these needs and request assistance.

(2) Upon request of a State Director, the Administrator will consider detailing DRSTs from other States to assist in processing Primary and Preservation Loan Service and Debt Settlement Applications.

(3) State DRSTs will consist of a team leader and team members, selected by the State Director.

(4) State DRSTs will be trained as follows:

(i) The National Office will participate in training meetings or workshops for DRST leaders as requested; and

(ii) States will be responsible for training and keeping the State team currently informed on all phases of processing applications for Primary and Preservation Programs.

(5) Each State Director will issue a State supplement establishing a DRST for the State(s) under his/her jurisdiction. This supplement will name the team leader and all members. A copy of this supplement will be sent to the National Office, Attention: Assistant Administrator Farmer Programs.

(b) *National Office DRST Leaders.* The National Office will establish a cadre of DRST team leaders.

(1) National Office team leaders will be used as follows:

(i) Assisting State Directors in training of FmHA field personnel, other USDA personnel, and temporary personnel in the processing of Primary and Preservation Loan Service Program and Debt Settlement applications.

(ii) Assisting State Directors in the organizing and expediting of assistance to eligible applicants; and

(iii) Leading DRSTs in areas with an unusually large volume of Primary and Preservation Loan Service and Debt Settlement Program applications.

(2) Upon request from a State Director, the Assistant Administrator, Farmer Programs, will consider detailing one or more National Office team leaders to assist in the training of personnel and organizing of the processing of Primary and Preservation Loan Service and Debt Settlement Program applications.

§ 1951.918 FmHA Debt Restructuring Assessment Teams (DRAT).

The State Director will deploy DRATS on a continuing basis to monitor debt restructuring processing activities in order to minimize processing errors, especially in calculating net recovery and writedown calculations and eligibility determinations. Such teams will be composed of State Office Farmer Programs Staff members, District Directors or Assistant District Directors, Office Management Assistants/Program Review Assistants, and Auditors from the Office of Inspector General, if they desire to participate. The team leader will keep the State Director informed by telephone and by submission of weekly written reports, setting forth the problems discovered and the corrective actions taken or to be taken. The State Director will keep all County and District Offices in the designated area of the State informed of the common problems found by the team and require appropriate corrective action to be taken by the County Offices. Such actions will be monitored by the District Director and reported to the State Director when corrective measures have been completed. State Directors will monitor the handling of this quality control measure. The Assistant Administrator, Farmer Programs, will monitor States quality control procedures.

§§ 1951.919–1951.949 [Reserved]

§ 1951.950 OMB control number [Reserved]

11. Exhibit A of Subpart S is amended by adding Attachments 5–A, 6–A, 9–A and 10–A as follows:

Exhibit A—Notice of Availability of Loan Servicing Programs for Delinquent Farm Borrowers

* * * * *

Attachment 5–A to Exhibit A

Note to County Supervisor:

This attachment is used when notifying a borrower who returned Attachment 2 or 4 of Exhibit A, that FmHA cannot provide the assistance requested with the Primary Loan Services Programs.

Notice of Intent To Accelerate or To Continue Acceleration and Notice of Borrowers' Rights

(to be used for Applications Submitted on or After November 28, 1990)

Name and Address: _____

Dear (Borrower's Name): _____

You are not eligible for debt restructuring.

I. ☐ FmHA has reviewed your application for primary loan servicing (debt restructuring).

You cannot get primary loan servicing because your Farm and Home Plan does not show you can pay all your family living expenses, farm operating expenses, and scheduled debt repayments even with FmHA help.

To get primary loan servicing, your Farm and Home Plan must show you can pay FmHA at least $_____ per year.

Note: The attached computer printout summarizes FmHA's calculations based on your application.

II. ☐ FmHA has reviewed your application and your case file. Your Farm and Home Plans show you can pay all of your family living expenses, farm operating expenses, and scheduled debt repayments if FmHA uses primary loan servicing, softwood timber, and conservation easement programs to restructure your loans.

But you have not acted in good faith.

You have broken your loan agreements with FmHA.

You have broken loan agreements with FmHA in the following way:

☐ You are $_____ behind in your scheduled loan payments.

☐ You have sold or gotten rid of property you used to secure the FmHA loan without proper approval from FmHA. You have not acted in good faith. This property is

_____

_____

(Describe property.)

☐ You have stopped farming or ranching.

☐ You have

_____

III ☐ FmHA has reviewed your application and case file. You have sufficient nonessential assets to bring your FmHA account current. The net recovery value of FmHA's collateral is $_____. The net recovery value (NRV) of the nonessential assets is $_____. Your nonessential assets and their NRVs are as follows:

Nonessential assets	NRVs
_____	_____
_____	_____
_____	_____
_____	_____

The NRV is the current appraised market value minus any prior liens and any costs of sale such as taxes due, commissions and advertising costs.

The amount needed to bring your FmHA account current is $_____.

If you intend to sell the nonessential assets or borrow against their value to obtain the money to pay FmHA current, you must do so immediately so that you can pay FmHA current within 90 days from the date you receive this letter.

If you do not pay FmHA current within 90 days or appeal the adverse decision and/or negotiate the appraisal (see part VI of this notice), FmHA will accelerate your account (see part V). If you appeal the decision and/or negotiate the FmHA appraisal, the 90-day period to pay FmHA current will not start until all the appeals or negotiation is completed. You must check the appropriate block on the response form and return it to FmHA within the specified time limit. Since FmHA believes you have sufficient nonessential assets to bring your FmHA account current, you are not now eligible for net recovery buyout (option 5 on Attachment 6–A). If you disagree, see Part VI for an explanation of your rights.

IV. ☐ You have already received one writedown or buyout.

V. FmHA intends to foreclose.

FmHA will accelerate your loan because you are not eligible for primary loan servicing.

FmHA will take legal action to collect the money you owe.

FmHA may:

(1) Repossess and sell your equipment, crops, livestock, livestock products, and other personal property used to secure your FmHA loan;

(2) Foreclose and sell your real estate mortgaged to FmHA. This could include your dwelling even if your housing account is current, if it was used to secure your farm loan(s);

(3) Stop any release of money from the sale of crops, livestock, livestock products, or other property you need to live and operate your farm;

(4) Take by administrative offset any money you are owed by Federal agencies;

(5) File lawsuits to collect money you owe to FmHA.

VI. What you can do to stop foreclosure.

Before FmHA can take action against you, you can:

(1) Pay your FmHA account current.

(2) Request a meeting with the FmHA county official.

If you disagree with FmHA's decision that you broke your loan agreement or the decision not to give you debt restructuring, you should request a meeting with the county FmHA official. The county official can explain the FmHA decision. You can also present changes in your Farm and Home Plan which may show that you can make the amount of payment listed above in Section I.

To ask for this meeting, check the box #No. 1 on the Response Form: (Attachment 6–A).

Time limit: You must return the "Response Form" to the county FmHA office within 15 days from the date you get this letter. You should also call the county office to set up the meeting.

(3) Request an appeal hearing.

You may also request an appeal hearing to contest FmHA's decision. At the hearing you may challenge the ways FmHA says you broke your loan agreements. You may also challenge FmHA's decision that you cannot present a feasible Farm and Home Plan for primary loan servicing if your notice states FmHA believes you cannot present a feasible plan. You may also challenge FmHA's decision that you are ineligible for debt restructuring because you have already received a writedown or buyout.

You can appear at the appeal hearing and present witnesses and documents to support your position.

If you did not negotiate your appraisal (see item (4) below), you may now ask for an independent appraisal of your property including any nonessential assets that FmHA says you own. This independent appraisal may be important if you think FmHA has put too high or too low a value on your property. You will have to pay for this appraisal. FmHA will give you a list of appraisers to choose from. Check box #3 on the "Response Form" if you want the independent appraisal.

If you request a meeting with the FmHA county official, you will be given a chance to appeal after the meeting.

If you do not want to request the meeting but do want to appeal, you must say so on the enclosed "Response Form."

You may request both the meeting and the appeal hearing on the "Response Form." Check box #2 on the "Response Form" to request an appeal hearing. If you ask for just the appeal hearing, you must return the "Response Form" to FmHA within 30 days of the date you received the letter.

(4) Negotiation of the Appraisal.

If you object to the FmHA appraisal of your property, you may ask the FmHA to negotiate the appraisal with you by returning the "Response Form." You must ask to negotiate the FmHA appraisal within 30 days from the date you receive this notice. To do this you must provide FmHA with a copy of your current independent appraisal or you must now obtain, at your cost, an independent appraisal of your property. The appraisal and the appraiser must meet certain standards published in FmHA's regulations.

If you do not have a current appraisal and wish FmHA to assist you, check option 3 of the "Response Form" and FmHA will provide you with a list of such appraisers.

You must provide FmHA a copy of your independent appraisal within 30 days of requesting negotiation.

Once you have submitted your appraisal to FmHA, you and FmHA will choose an independent appraiser to complete a third appraisal. You must pay one-half of the cost of the third appraisal. FmHA will pay for the other half of the third appraisal. Following the completion of the third appraisal, the average of the two appraisals that are closest in value, as determined by FmHA, shall become the final appraisal. This final negotiated appraisal is not appealable. Do not select this option of the "Response Form" if you and FmHA have already negotiated the appraisal.

(5) Buy Out the Loan at Recovery Value.

You have this option only if the recovery value is greater than the value of the restructured loan, you cannot repay your FmHA debt due to circumstances beyond your control, and you have acted in good faith and tried to keep your agreements with FmHA. Also, buyout is subject to a $300,000 maximum, lifetime limit, and a limit of one buyout per borrower. A further explanation of these limits can be found in the "Notice of the Availability of Loan Service Programs For Delinquent Farm Borrowers" which was sent to you earlier.

You (may) or (may not) buy out your FmHA loan(s) at the recovery value of the property securing the loan and any nonessential assets. The recovery value is $_____. The restructured loan(s) value is $_____.

Note to County Supervisor
Circle the appropriate entry.

Note: The attached computer printout summarizes FmHA's calculations.

If you are eligible and pay the recovery value, FmHA will write off the rest of your debt if the amount does not exceed $300,000. If you are eligible to pay the recovery value, FmHA will require you to sign a recapture agreement. This agreement would allow FmHA to require you to pay the difference between the recovery value and the current market value of your real estate securing the loan if you sell it within 10 years of the agreement. FmHA can never recapture more than it wrote off.

Time Limit. If you are eligible and want to buy out your loan(s) at the recovery value, you must pay FmHA within 90 days from the date you received this letter. You must pay FmHA in cash, money order, or certified check.

If you appeal FmHA's adverse decision and/or negotiate the FmHA appraisal, the 90-day period to buy out at recovery value will not start until all of the appeals are completed. Check box #3 on the "Response Form" if you want to buy out at recovery value.

If you do not buy out your loan at recovery value or you do not appeal or do not win your appeal of an FmHA denial of your request to buy out your loan and you applied for debt settlement when you applied for the Primary and Preservation Loan Service Programs, your application for debt settlement will be considered at the same time as your application for preservation loan servicing.

(6) Consideration for Homestead Protection and Farmland Leaseback/Buyback.

If you do not appeal, or if you do not win your appeal and you do not buy out the loan at recovery value, FmHA will automatically consider you for Homestead protection and farmland leaseback/buyback. (You applied for these programs when you applied for primary loan servicing (debt restructuring).) FmHA will notify you that it will be considering you for these programs and will request some additional information when the time comes to consider you.

VII. What happens if you do not respond?

If you do not respond to this letter by completing and returning the enclosed Attachment 6–A, "Response to Notice of Intent to Accelerate or Continue with Acceleration and Notice of Borrowers' Rights," FmHA will accelerate or continue with acceleration of your FmHA debts. This is a very severe action. FmHA will take any

of the actions listed in Section V above to collect on your debt.

The Right Not to Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract.)

You cannot be denied a loan because all or part of your income is from a public assistance program.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

County Supervisor
Farmers Home Administration
United States Department of Agriculture

* * * * *

Attachment 6–A to Exhibit A

Note to County Supervisor:

This attachment will always be sent with Attachment 5–A

Response to Notice Informing Me of FmHA's Intent to Accelerate or Continue with Acceleration and Notice of My Rights

(To Be Used for Application Submitted on or After November 28, 1990)

TO: County Supervisor, Farmers Home Administration
FROM: _____
(Please print your name and address.)

I have read the notice informing me of FmHA's intent to accelerate or continue with acceleration of my loan which I received with this response form.

I want to: [Check appropriate box or boxes.]

☐ (1) Request a meeting with FmHA county official.

I must return this "Response Form" within 15 days to request a meeting.

My current telephone number is _____.

I understand that I do not lose my appeal rights by asking for this meeting.

☐ (2) Request an appeal hearing.

I must return this "Response Form" within 30 days to request a hearing.

I understand that I will be contacted by FmHA's National Appeals Staff to set up the appeal hearing date and to give more information.

☐ (3) Request an independent appraisal of my property including any nonessential assets.

I must return this "Response Form" within 30 days to request an independent appraisal.

I understand that I must pay for this appraisal. I understand that the FmHA County Supervisor will give me a list of appraisers, from which I must choose one if I am also requesting an appeal. I understand that I need not choose an appraiser from the list if I am requesting negotiation of the appraisal instead of an appeal.

☐ (4) Request Negotiation of the Appraisal.

I must return this "Response Form" within 30 days to request a negotiation of my appraisal.

I understand that I must provide FmHA with a copy of my independent appraisal within 30 days of requesting negotiation. I understand that I must pay for this appraisal and one-half of a third appraisal.

I understand that I cannot negotiate my appraisal if I have already negotiated it, and that I cannot appeal my appraisal once I negotiate it.

☐ (5) Buy out my loan(s) at the recovery value.

I understand that I must pay FmHA $_____ in cash, certified check, or money order. I understand that I must pay this to FmHA within 90 days of the date I received this letter, or if I appeal the FmHA decision, I must pay within 90 days from the end of the appeal of the FmHA decision.

☐ (6) Pay my FmHA account current.

I understand that I must pay FmHA $_____ to pay my account current. I will pay this amount to FmHA within 90 days of the date I received this letter, or if I appeal the FmHA decision, I will pay within 90 days from the end of the appeal of the FmHA decision. I understand that when I pay this amount FmHA will continue with my account.

Borrower's signature

Date

* * * * *

Attachment 9–A to Exhibit A

Note to County Supervisor: This attachment will be sent to borrowers who are 180 days delinquent, whose accounts have not been accelerated, WHO DID NOT return Attachment 2 of Exhibit A sent on or after November 28, 1990, or Attachment 2 of Exhibit F.

Notification of Intent to Accelerate or Continue Acceleration of Loans and Notice of your Rights

(to be Used for Applications Received on or After November 28, 1990)

FmHA will accelerate your loan because you have not asked for primary loan service programs.

You can:

(1) Ask for meeting with an FmHA your County official.

(2) Appeal FmHA's decision.

(3) Ask to voluntarily sign over to FmHA the property used to secure your loan and ask to be released from your debt.

(4) Apply for a leaseback or buyback of your farm real estate once FmHA has taken it.

(5) Ask to keep your home after FmHA has taken it.

Dear (Borrower's Name):

You are behind with your payments to FmHA, and a review of your account shows:

☐ You are $_____ behind in your FmHA loan payments.

This is a violation of your loan agreement.

☐ You have sold or gotten rid of property used to secure your FmHA loan. You did not get written approval for this.

The property is _____
(Describe property.)

☐ You have stopped farming or ranching.

This is a violation of your loan agreement.

☐ You have _____

(Insert reason for proposed action.)

FmHA Will Accelerate Your Loans

This means FmHA will take legal action to collect the money you owe. They will foreclose on real estate and other property used to secure your loans. This could include your dwelling even if your housing account is current, if it was used to secure your farm loan(s). They may also stop the release of money from the sale of crops or other property. They may take by administrative offset any money you are owed by other Federal agencies.

Steps You Can Take Before FmHA Accelerates or Continues Acceleration of Your Loans

(1) Right to a meeting. You have the right to meet with an FmHA County official before they decide to accelerate or continue acceleration of your loan. You must check the box on Attachment 10–A saying you want a meeting. (Attachment 10–A is the "Response to Notice of Intent to Accelerate or Continue Acceleration of My Loan.")

How Soon Must I Ask for a Meeting? You must ask for a meeting within 15 days from the date of this notice. Check the box on Attachment 10–A. Return it to your County office. Do this as soon as possible.

(2) The Right to Appeal. You can ask for an administrative appeal before a hearing officer. You can contest FmHA's decision to accelerate or continue acceleration of your loan. You can ask for an administrative appeal, even if you have asked for a meeting and your problems were not resolved at that meeting.

You can ask for an appeal even if you do not have a meeting.

You can appeal the FmHA appraisal if you have not negotiated the appraisal. Your appeal of the appraisal must be based on facts supported by an independent appraisal. You must pay for the independent appraisal. FmHA will give you a list of approved appraisers to choose from. Check box #4 if you want an independent appraisal.

How to Ask for an Appeal. Check the box on Attachment 10–A and mail it to your County Office within 30 days of getting this notice.

What Happens if You Do Not Respond? If you do not respond to this notice by filling out Attachment 10–A, FmHA will accelerate or continue acceleration of any loans. This means they will take legal action to collect the unpaid loan, including foreclosure as described above.

Note: Foreclosure means you lose the title to your land. But you can still apply for preservation loan service programs to keep possession of your house or farm if FmHA buys the property at the foreclosure sale. (See Exhibit A Attachment 1 sent to you on _____. If you did not get these forms, contact your County Office within 15 days of this notice.)

The Right Not to Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith.

The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

County Supervisor
Farmers Home Administration
U.S. Department of Agriculture
Date: _____

* * * * *

Attachment 10–A to Exhibit A

Note to County Supervisor:

This attachment will always be sent with Attachment 9–A.

Response to Notice Informing Me of FmHA's Intent to Accelerate or Continue to Accelerate my Loan

(To be used for Applications Submitted on or after November 28, 1990)

Notice of My Rights

TO: County Supervisor, Farmers Home Administration
FROM: _____
(Please print your name and address.)

I want to: [Check one or more of the following boxes]

☐ (1) Request a meeting with the FmHA County Official. My telephone number is _____. I understand I do not lose my right to appeal if I ask for a meeting.

☐ (2) Voluntarily sign over to FmHA all the property used to secure my loan and settle my debt.

☐ (3) Request an administrative appeal. I understand that I will be contacted by an official of FmHA's National Appeals Staff to set up an appeal hearing and give me more information.

☐ (4) Request an independent appraisal of property securing my loan(s). I understand I must pay for this appraisal. I understand that the hearing officer from the National Appeals Staff will give me names of three appraisers. I have not already negotiated the appraisal.

☐ (5) Preservation loan service programs.

Signed _____
Date _____

12. Exhibit B to Subpart S is removed and reserved.

13. Exhibit C–1 to Subpart S is added to read as follows:

Exhibit C–1—Net Recovery Buyout Recapture Agreement

(For applications filed for restructuring on or after November 28, 1990)

PURPOSE

This agreement with FmHA will allow you to buy out your loan(s) at the net recovery value.

1. I/We _____ understand and agree to the following conditions.

2. I/We will give FmHA a lien (mortgage or deed of trust) on the FmHA real estate security property I/we own to secure this agreement.

The lien is to secure the maximum recapture amount listed in item 6.c. of this agreement. This lien is secondary to the following lien(s), including any lien used to obtain the net recovery buyout amount up to the net recovery value.

_____
(name, address, and unpaid balance of lien(s))

3. I/We agree that if I/we do not sell or convey any portion of the real estate used as security for 10 years, the agreement and any liability you have under it will be satisfied at the end of 10 years, and then FmHA will release its lien.

Note: Convey includes, but is not limited to, any form of transfer in all or any portion of the real estate property, including sale, gift, Contract Sale/Purchase Agreement, foreclosure, and below-fair-market sale, but does not include a mortgage or deed of trust. Transfer of title to property to a spouse or child who is activity engaged in farming the property upon the death or retirement of a borrower, will not be treated as a conveyance. In such a transaction, FmHA will not release its lien, and the transferee will assume liability under the agreement.

4. I/We agree that as of the date of this agreement, the net recovery value of the real estate is $_____.

5. I/We agree that as of the date of this agreement, the total amount of the FmHA debt secured by real estate including principal and interest before buyout is $_____.

6. If I/we do sell or convey any part or all of this real estate within 10 years of this agreement, I/we must pay FmHA the recapture amount for the part sold or conveyed which is the smaller of a., b., or c.

a. The Fair Market Value of the real estate parcel at the time of the sale or conveyance, as determined by an FmHA appraisal, minus that portion of the recovery value of the real estate represented in item 4, or

b. The Fair Market Value of the real estate parcel at the time of the sale or conveyance, as determined by an FmHA appraisal, minus the unpaid balance of prior liens at the time of the sale or conveyance,

c. The total amount of the FmHA debt written off for loans secured by real estate. I/We agree that this amount is the outstanding balance of principal and interest owed on the FmHA Farmer Programs loan(s) as of the date of this agreement in item 5, minus the net recovery value of the real estate in item 4. This amount is $_____ and is the maximum amount that can be recaptured.

7. When I/we pay the recapture amount due, FmHA will release its lien on the property sold or conveyed. The agreement and any liability I/we have under it will be satisfied at the end of 10 years if I/we have made all the required payments under the recapture agreement. The agreement and any liability I/we have under it will be satisfied before this time only if I sell or convey all of the real estate securing this agreement and make all the required payments under the agreement.

8. This agreement is subject to FmHA regulations in 7 CFR part 1951, subpart S, and any future regulations which are consistent with this agreement.

9. The date of this agreement is the latest date of the dates below.

Signed _____
(borrower or obligor)
Date _____
Signed _____
(borrower or obligor)
Date _____
(FmHA) _____
Date _____

14. In subpart S, Exhibit E and Attachment 1 to Exhibit E are revised and Attachment 2 to Exhibit E is added to read as follows:

Exhibit E—"Notification of Request for Mediation or Meeting of Creditors and Other Options."

(To be Used by FmHA to Inform Borrowers That FmHA is Requesting Mediation or a Voluntary Meeting of the Borrower's Creditors and to Offer Borrowers who Submitted Applications on or After November 28, 1990, the Opportunity to Negotiate the FmHA Appraisal and/or Pay FmHA the Net Recovery Value of any Nonessential Assets)

(Borrower's Name and Address): _____
Dear (Borrower's Name): _____

The Farmers Home Administration (FmHA) has carefully considered your request for primary loan servicing programs. Due to your debt with lender other than FmHA, you are unable to develop a feasible plan. Your Farm and Home Plan must show that you have enough income after payment of your essential living and operating expenses and other non-FmHA debts to make an annual payment to FmHA of at least $_____. Your Farm and Home Plan shows that you have only $_____ to make this annual payment. Attached are the calculations on which our decision is based. (Use the appropriate following paragraph.)

Paragraph I

(To be used when Certified State Mediation is available.)

Certified State Mediation

We are requesting mediation under the (Name) State Certified Mediation Program. We will work with you and your creditors to determine if your debts can be adjusted sufficiently to permit you to develop a feasible plan of operation. If, with the adjustment of your debt, you are able to develop a feasible plan of operation which shows that you can make an annual payment to FmHA of at least $_____, FmHA will reconsider your application for primary loan servicing.

Paragraph II

(To be used when Certified State Mediation is not available.)

Meeting of Creditors

We will schedule a meeting with you and your other creditors in an effort to reach agreements with them to adjust your debts sufficiently to permit you to develop a feasible plan of operation. The FmHA State

Director will contract for a mediator or appoint an FmHA representative not previously involved in servicing of your account upon your written request to participate in the meeting with creditors. Please sign the attached acknowledgment within 30 days of the date of this letter. The acknowledgment will be your written request and consent to FmHA releasing information concerning your account to other creditors who participate in the meeting.

(The following paragraphs will be removed if the application was submitted before November 28, 1990, or the borrower does not have any nonessential assets.)

Nonessential Assets

FmHA has determined that you have nonessential assets that do not contribute a net income to pay essential family living expenses or to maintain a sound farming operation. The net recovery value (NRV) of the nonessential assets has been added to the NRV of the FmHA collateral for the calculation on the attached printout. The NRV of the nonessential assets is $_____. Your nonessential assets and their NRVs are as follows:

Nonessential assets	NRVs
_____	_____
_____	_____
_____	_____
_____	_____

If you intend to sell the nonessential assets or borrow against their value, you must pay the NRV of the nonessential assets on your FmHA debt and then FmHA will recalculate the value of your FmHA debt. If you are going to pay FmHA the NRV of your nonessential assets, you must do so within 45 days of the date of receiving this letter. You must check the appropriate block on the response form and return it to FmHA within 45 days with $_____ for payment of the NRV of the nonessential assets. This payment must be made before any mediation or meeting of creditors.

If you wish to dispute FmHA's decision that you own nonessential assets, you will be notified in a later notice of your right to request a meeting and/or hearing.

Negotiation of the Appraisal

If you object to the FmHA appraisal of your property, you may ask the FmHA by returning the "Response Form" to negotiate the appraisal with you. You must ask to negotiate the FmHA appraisal within 30 days from the date you receive this notice. To do this you must provide FmHA with a copy of your current independent appraisal or you must now obtain, at your cost, an independent appraisal of your property. The appraisal and the appraiser must meet certain standards published in FmHA regulations.

If you do not have a current appraisal and wish FmHA to assist you, check option 2 of the "Response Form" and FmHA will provide you with a list of such appraisers.

You must provide FmHA a copy of your independent appraisal within 30 days of requesting negotiation.

Once you have submitted your appraisal to FmHA, you and FmHA will choose an independent appraiser to complete a third appraisal. You must pay one-half of the cost of the third appraisal. FmHA will pay for the other half of the third appraisal. Following the completion of the third appraisal, the average of the two appraisals that are closest in value, as determined by FmHA, shall become the final appraisal. This final negotiated appraisal is not appealable. Do not select this option of the "Response Form" if you and FmHA have already negotiated your appraisal.

If you wish to dispute FmHA's appraisal, but do want to reach agreement with FmHA by negotiating the appraisal, you will be notified in a later notice of your right to request a meeting and/or hearing.

Sincerely,

_____

Attachment

Attachment 1 to Exhibit E

Borrower's Request for Meeting of Creditors and Acknowledgement

I/We have been given a notice explaining that I/we are not eligible for primary loan service programs. FmHA has told me that due to my/our debt with other lenders it does not believe that I/we can develop a feasible plan. I/we request that you schedule a meeting with my undersecured creditors to assist me/us in developing a feasible plan of operation. I/we consent to FmHA releasing information concerning my/our FmHA account(s) to these creditors to assist me in developing a feasible plan.

_____

(Borrower's signature)

_____

(Date)

Note to County Supervisor: Send Attachment 1 to Exhibit E to Borrowers who submitted applications Before November 28, 1990.

Attachment 2 to Exhibit E

Borrower's Request for Meeting of Creditors and/or Request to Negotiate the FmHA Appraisal and Acknowledgment

I/We have been given a notice explaining that I/we are not eligible for primary loan service programs. FmHA has told me that due to my/our debt with other creditors it does not believe I/we can develop a feasible plan. I/we consent to FmHA releasing information concerning my/our FmHA account(s) to these creditors to assist me in developing a feasible plan.

I/we want to: [Check the appropriate box or boxes.]

☐ (1) Request that you schedule a meeting with my undersecured creditors to assist me/us in developing a feasible plan of operation. I must return this "Response Form" within 30 days if I want a meeting. Note: You should not check this box if FmHA has advised you that they are requesting mediation under the (Name of State) State Certified Mediation Program. FmHA must use mediation if the State has a certified mediation program.

☐ (2) Request an independent appraisal of my property including any nonessential assets.

I must return this "Response Form" within 30 days to request an independent appraisal.

I understand that I must pay for this appraisal. I understand that the FmHA County Supervisor will give me a list of appraisers. I understand that FmHA will not negotiate the appraisal more than once.

☐ (3) Request Negotiation of the Appraisal.

I must return this "Response Form" within 30 days to request a negotiation of my appraisal.

I understand that I must provide FmHA with a copy of my independent appraisal within 30 days of requesting negotiation. I understand that I must pay for this appraisal and one-half of a third appraisal. I understand that FmHA will not negotiate the appraisal more than once.

(4) I/We am paying FmHA the net recovery value of any nonessential assets that FmHA has said I/we own. I will pay this amount within 45 days.

Please recalculate my restructuring of the FmHA debt.

_____

(Borrower's signature)

_____

(Date)

Note to County Supervisor: To be Sent to Borrowers Who Submitted Applications on or After November 28, 1990.

15. Exhibit F to subpart S is revised and Attachment 2 to Exhibit F is added to read as follows:

Exhibit F—Notification of Offer to Restructure Debt

(To Be Used By FmHA to Offer to Restructure the Borrower's Debt, and in the Case of Applications Submitted on or After November 28, 1990, to Inform the Borrower About Any Nonessential Assets and the Opportunity to Negotiate the Appraisal)

(Borrower's Name and Address) _____

_____

(Borrower's Name and Address)

We have determined that the Farmers Home Administration (FmHA) can approve your request for primary loan servicing programs.

Offer

Our calculations indicate that you will be able to make the necessary annual payment on your FmHA loan if your loan is restructured through the use of primary loan servicing programs. Therefore, we are offering to restructure your FmHA debt in the following fashion:

_____

_____

_____

(The County Supervisor will fill in the blank by describing exactly what would be done with the borrower's account.) For example, if the borrower has a farm ownership loan, the County Supervisor will fill in the blank by saying that ($ Amount) of principal and interest on that loan would be written off, and the remainder of the loan would be reamortized for 40 years from the original date of the loan, or up until (date) at the limited resource interest rate, which is ____ percent, in exchange for the borrower

signing a shared appreciation agreement, which is attached to the notice.)

The attached computer printout indicates the primary loan servicing program that will keep you on the farm and provide the greatest net recovery to the Government.

If you want FmHA to use the primary servicing program identified on the computer printout to keep you on the farm, you must accept this offer in writing. Your acceptance must be received by FmHA no later than 45 days from your receipt of this letter. You may accept this offer in writing by signing and returning the attached form titled "Acceptance of Offer to Restructure my Debt."

(The following paragraphs (the nonessential assets option) will be removed if the application was accepted before November 28, 1990, or if the application was submitted on or after that date *and* the borrower does not have any nonessential assets.)

Nonessential Assets

FmHA has determined that you have nonessential assets that do not contribute a net income to pay essentially family living expenses or maintain a sound farming operation. The net recovery value (NRV) of the nonessential assets has been added to the NRV of the FmHA collateral for the calculation on the attached printout. The NRV of the nonessential assets is $_____. Your nonessential assets and their NRVs are as follows:

Nonessential assets	NRV's
_____	_____
_____	_____
_____	_____
_____	_____

If you intend to sell the nonessential assets or borrow against their value, you must pay the NRV of the nonessential assets and then FmHA will recalculate the value of your FmHA debt. If you are going to pay FmHA the NRV of your nonessential assets, you must do so within 45 days of the date of receiving this letter. You must check the appropriate block on the response form and return it to FmHA within 45 days with your payment for the NRV of the nonessential assets of $_____.

If you wish to dispute FmHA's decision that you own nonessential assets, you will be notified in a later notice of your right to request a meeting and/or hearing.

(The following paragraphs (the negotiation option only) will be removed if the borrower has already negotiated the appraisal or the application was submitted before November 28, 1990.)

Negotiation of the Appraisal

If you object to the FmHA appraisal of your property, you may ask the FmHA to negotiate the appraisal with you by returning the "Response Form." You must ask to negotiate the FmHA appraisal within 30 days from the date you receive this notice. To do this you must provide FmHA with a copy of your current independent appraisal or you must now obtain, at your cost, an independent appraisal of your property. The appraisal and the appraiser must meet certain standards published in FmHA's regulations.

If you do not have a current appraisal and wish FmHA to assist you, check option 2 of the "Response Form" and FmHA will provide you with a list of such appraisers.

You must provide FmHA with a copy of your independent appraisal within 30 days of requesting negotiation.

Once you have submitted your appraisal to FmHA, you and FmHA will choose an independent appraiser to complete a third appraisal. You must pay one-half of the cost of the third appraisal. FmHA will pay for the other half of the third appraisal. Following the completion of the third appraisal, the average of the two appraisals that are closest in value, as determined by FmHA, shall become the final appraisal. This final negotiated appraisal is not appealable. Do not select this option on the "Response Form" if you and FmHA have already negotiated your appraisal.

If you wish to dispute FmHA's appraisal, but do want to reach agreement with FmHA by negotiating the appraisal, you will be notified in a later notice of your right to request a meeting and/or hearing.

What Happens if You Do Not Accept the Offer

If you do not accept the restructuring offer on page 1, FmHA will deny your request for primary loan servicing. You will receive an additional notice stating that FmHA intends to liquidate your account. The notice will explain the reasons for this action and give you the opportunity to appeal.

You may have a federal income tax liability if FmHA restructures you FmHA indebtedness with a write-down. You should contact the Internal Revenue Service (IRS) for information on this matter.

Sincerely,

_____

County Supervisor

* * * * *

Attachment 2 to Exhibit F

Acceptance of Restructuring Offer, Request To Negotiate Appraisal or Pay FmHA the NRV of Nonessential Assets

(This Attachment will be used Instead of Attachment 1 for Borrowers who Submitted Applications on or After November 28, 1990.)

To: County Supervisor, Farmers Home Administration

From: _____

Please print your name and address)

Dear County Supervisor:

I have received your offer to restructure my FmHA debt. (Check the appropriate blocks.)

☐ (1) I/We accept FmHA's offer to restructure my debt. I/We must accept FmHA's offer within 45 days of receiving Exhibit F.

☐ (2) I/We Request an independent appraisal of my property including any nonessential assets.

I must return this "Response Form" within 30 days to request an independent appraisal.

I understand that I must pay for this appraisal. I understand that the FmHA County Supervisor will give me a list of appraisers. I understand that FmHA will not negotiate the appraisal more than once.

☐ (3) Request Negotiation of the Appraisal.

I must return this "Response Form" within 30 days to request a negotiation of my appraisal.

I understand that I must provide FmHA with a copy of my independent appraisal within 30 days of requesting negotiation. I understand that I must pay for this appraisal and one-half of a third appraisal. I understand that FmHA will not negotiate the appraisal more than once.

☐ (4) I/We intend to pay FmHA the net recovery value of any nonessential assets that FmHA has said I/we own.

I/We must pay the net recovery value of the nonessential assets within 45 days of receiving Exhibit F.

Please recalculate my restructuring of the FmHA debt.

Sincerely,

_____

(Borrower's signature)

_____

(Date)

16. Exhibit G to Subpart S is amended by revising paragraphs II (B) (3), VIII (D), and to add paragraph IX (H) (3) to read as follows:

Exhibit G—Deferral, reamortization and reclassification of distressed Farmer Program (FP) loans for softwood timber production (ST) Loans

* * * * *

II. * * *

(B) * * *

(3) For applications received before November 28, 1990, when a loan is reamortized the accrued interest less than 90 days overdue will not be capitalized. For new applications, as defined in § 1951.906 of this subpart, the total amount of outstanding accrued interest will be added to the principal at the time of reamortization. Payments may be deferred for up to 45 years or until the timber crop produces revenue, whichever comes first, except as required in paragraph VIII (B) of this section. If income is available, payments will be required as determined in paragraph II (B)(4) of this exhibit. Repayment of such a reamortized loan shall be made not later than 46 years after the date of the reamortization unless the borrower qualifies for a further reamortization as authorized in section IX (H) of this exhibit.

* * * * *

VIII. * * *

(D) For applications for Primary and Preservation Loan Service Programs received before November 28, 1990, interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance upon which interest will accrue over the Softwood Timber deferral period, interest less than 90 days past due will not be capitalized and will be payable at the end of the Softwood Timber deferral period. For new applications, as defined in § 1951.906 of this subpart, the total amount of outstanding accrued interest will be added to the principal balance to form a new principal

balance upon which interest will accrue over the Softwood Timber deferral period. The FMI for Form FmHA 1940–17 has examples (IV, V) which explain this procedure. The Finance Office will apply the payments made on the note in accordance with subpart A of part 1951 of this chapter.

* * * * *

IX. * * *

(H) * * *

(3) For applications received before November 28, 1990, the interest less than 90 days past due will not be capitalized. For new applications, the total amount of outstanding accrued interest will be capitalized. The term of the reamortized note will not exceed 50 years from the date of the initial ST note. The total years of deferred payments will not exceed 45 years, including the payments deferred in the initial note. The note should be scheduled for payment when the timber is expected to be harvested, or when income will be available to pay on the note, whichever comes first. However, partial payments must be scheduled for those years that exceed the deferral period.

* * * * *

17. Exhibit H to subpart S is amended to add at the end of paragraph VII(A)(6) the following: "In the case of a nondelinquent borrower, the amount canceled shall not exceed 33 percent of the indebtedness secured by the real estate."

18. Exhibit H to subpart S is amended by revising the title, removing paragraph II(3), redesignating paragraphs II (4) and (5) as II (3) and (4), revising the introductory text of paragraph I, and revising paragraph II (1) and (2) and VII(G) to read as follows:

Exhibit H—Primary Loan Service and Conservation Easement Programs

I. *General*

A Conservation Easement (CE) may be exchanged, when requested by a borrower (current or delinquent), for a cancellation of a portion of his/her FmHA indebtedness. The CE may be considered alone, or with the Primary Loan Servicing Programs as set forth in § 1951.909 of this subpart and the requirements of this exhibit. These easements can be established for conservation, recreational, and wildlife purposes on farm property that is wetland, wildlife habitat, upland or highly erodible land. Such land must be suitable for the purposes involved and, except in the case of wetland and wildlife habitat as defined in paragraphs (a) and (d) of this section, must have been row cropped each year of a three-year period ending on December 23, 1985. All Farmer Programs loans which are secured by real estate may be considered for a CE. Non-program loan debtors are not eligible to receive any benefits under this section. Conservation easements do not have to result in a net recovery to the government at least equal to the recovery from liquidation. If a borrower who has applied for Primary Loan Servicing initially declines an easement, but the debt writedown program fails to establish a feasible plan, the borrower will be considered for a CE combined with debt writedown to determine whether these options establish a feasible plan.

* * * * *

II. * * *

(1) All Farmer Program loans which are secured by real estate may be considered for a CE. A real estate mortgage or deed of trust taken on a borrower's real estate as additional security for a Farmer Programs loan qualifies as real estate security.

(2) The proposed easement better enables a qualified borrower to repay the loan in a timely manner.

* * * * *

VII. * * *

(G) *Recording of noncash credit.* Upon approval of the easement, the County Supervisor will complete Form FmHA 1951–47, "Farmer Program Noncash Credit for Purchase of Easement Rights," for entry into the FmHA field office terminal system. For applications received from delinquent borrowers, all of the borrower's Farmer Programs loans are eligible to be credited. The total credit to the borrower's account will not exceed the greater of the value of the lands on which the easement is acquired; or the difference between the amount of the outstanding indebtedness secured by the real estate, and the value of the real estate. In the case of a non-delinquent borrower, the amount to be credited will not exceed 33 percent of the amount of the loan secured by the real estate on which the easement is obtained. In all cases, the amount credited will be applied on the FmHA loans(s) as an extra payment in order of lien priority on the security. The loan may be reamortized if needed.

* * * * *

19. Exhibit I of subpart S is revised to read as follows:

Exhibit I—Guidelines for Determining Adjustments for New Recovery Value of Collateral

This exhibit provides guidance to State Directors and County Supervisors for determination of the factors to be used in adjusting current market value.

I. *State Director Responsibilities*

The State Director's analysis to County Supervisors will specify costs which are determined to be consistent state-wide, and provide specific guidance on the determination of costs which are somewhat consistent within the state but may vary on a county to county or property to property basis. All studies or surveys should be conducted so that all necessary information can be distributed at the same time.

A. *Real Estate Costs*

The analysis for liquidation and disposition costs should, as a minimum, address the following items and considerations:

(1) Months Held In Inventory. The average holding period will be the average number of months that suitable properties, which are not leased under the Preservation Loan Servicing Program, are held in inventory. The average holding period is derived from report code 597, "Farmer Program Inventory," for the period ending June 30. However, in situations where states have no suitable inventory, or have a very limited number (generally less than 5) of suitable properties for which the holding period for those properties is not representative (*i.e.*, one property in inventory held 75 months due to local litigation), the average of the holding periods of surrounding states should be used. National Office guidance may be requested in such cases.

(2) Sales Commission Rate. A study will be conducted, at least annually, to determine the typical method for disposition of FmHA inventory farms in the state. The findings will be used to determine whether commissions should be included as resale expenses, or whether FmHA normally disposes of inventory farms without the assistance of brokers or auctioneers. However, if a County Office is covered by an exclusive listing agreement or contract for auctioneering services, commissions will always be included as resale expenses in that office. The percentage of commission will be the rate specified on the listing agreement(s) or contract(s) in effect for the County Office.

(3) Cost Per Advertisement. The County Supervisor will contact at least one local newspaper to obtain a cost for advertising inventory farms in accordance with subpart C of part 1955 of this chapter.

(4) Rate of Change in Value. Yearly percentage decrease or increase in value is the rate of change in value. To provide a fair assessment of projected trends in farm land values, each State Director will establish a farm land market advisory committee (FLMAC). The committee will consist of the FmHA State Director, the State Executive Director of the Agricultural Stabilization and Conservation Service (ASCS), the State Conservationist for the Soil Conservation Service (SCS), and an Extension Specialist from a Land Grant University (if available) or other Agriculture Extension Service employee with knowledge of the farm real estate market.

The FLMAC will meet at least each July, and will consider the following information:

(a) The actual change in farm land values in the state during the previous year, as indicated in the most recent "Agricultural Land Values and Market Situation Outlook Report" issued by the USDA Economic Research Service.

(b) Current conditions in the state and national agricultural economics.

(c) Availability and cost of credit to purchase farm land.

(d) The amount of repossessed farm land held by FmHA, the Farm Credit System, and other private sector lenders.

(e) Any special conditions which would effect farm land values in the state.

(f) Any studies or research conducted by the State Agricultural University or similar scholarly source.

The FLMAC should, if possible, determine anticipated value changes on a regional basis with the state, if the state has agricultural regions with discernable differences.

The committee's meeting and decisions, including the basis for those decisions, will be documented, retained in the State Office as part of the State supplement file and provided to interested parties upon request.

Prior to providing the FLMAC determinations to FmHA field offices, the State Director will contact the FmHA State Directors in surrounding states to determine if the committee's findings are fairly consistent with those of surrounding states. If there are significant differences, the State Director may reconvene the committee to reconsider its findings.

(5) Management Charges. In situations where state or district wide contracts for management of inventory farms are in effect, the State Director will specify those rates to be used in management cost calculations. Generally, those costs should be specified on an annual per-acre basis or annual income percentage basis. If there are no area wide contract rates for some or all counties, guidance should be given on how to calculate rates based upon local costs. Such guidance should include customary management activities and their frequency to promote a consistent approach.

B. *Chattel Costs*

(1) Months Held in Inventory. FmHA rarely acquires chattel property because it can be sold much more quickly and easily than real estate. Therefore, the average holding period for chattel property will be zero, unless significant acquisitions occur and the Administrator determines that chattels do have a holding period.

(2) Sales Commission Rate. A study will be conducted, at least annually, to determine typical and reasonable commission rates for sales of chattel property in the state. The results of the study will be provided as guidance to field personnel. (The County Supervisor will conduct a survey of auctioneers to determine the average commission rate for chattel sales in the area.)

(3) Other Sales Cost. These are miscellaneous costs typically incurred when selling acquired chattels. County Offices should be advised to obtain specific guidance in unusual cases.

(4) Rate of Change in Value. This is a yearly percentage decrease or increase in the value. Because FmHA rarely acquires chattel property, the average holding period for chattel property will normally be zero, unless significant acquisitions occur and the Administrator determines that chattel do have a holding period. Therefore, there will normally not be a rate of change in value of chattels.

C. Legal and Administrative Costs

(1) Administrative liquidation cost for each loan type. This is the FmHA administrative cost of liquidation. The FmHA Resource Management System (RMS) work standards (FmHA Instruction 2006–J, Exhibit A, available in any FmHA office) for liquidation should be used to determine the administrative costs associated with liquidation for each loan type. The following equation will be used for each loan type.

(RMS standard for loan type in minutes divided by 60) x hourly pay rate for GS–11/1 = Administrative cost of liquidation for the loan type.

(2) Real estate costs and chattel only costs. This is the administrative liquidation cost for Government attorney time. The State Director will consult with the appropriate Regional OGC to determine the average amount of government attorney time involved in an individual involuntary liquidation of both real estate and chattels. The legal costs associated with liquidation for real estate and chattels will be arrived at separately by multiplying the attorney time, in hours, by $75.

(3) Property Management Cost. This is the administrative cost of managing an inventory property, while it is in inventory. This cost will be deducted in those cases involving real property. The costs should also be derived from the RMS standards. It will be necessary to determine the average number of property actions per month. This figure is obtained from the RMS–7 Report, which is issued to the State Offices quarterly. The following equation is used to compute the total property management cost:

(average actions per property per month × average holding period) × (RMS standard for property management for FO loans divided by 60) × (GS–11/1 hourly pay rate) + (RMS standard for FO property sale actions divided by 60) × GS–11/1 hourly pay rate = Administrative costs for inventory period.

II. *County Supervisor Responsibilities*

The County Supervisor will use the state-wide costs and give careful consideration to the cost and other guidance provided by the State Director. The County Supervisor will determine certain localized liquidation costs based upon guidance in the State supplement at least annually. These figures will be documented and provided to borrowers upon request.

A. Management Expenses. If the County Office is not covered by state or district wide property management contracts, the management expense rates will be based upon local level contract rates.

B. Repairs. Approximate costs for typical essential repairs may be developed, considering the guidance in the state supplement. Repair items must be related to physical condition (*i.e.*, roof, windows, doors, etc.) and not to functional or economic obsolescence.

C. Advertisements. The County Supervisor will contact at least one local newspaper to obtain a cost for advertising inventory farms in accordance with subpart C of part 1955 of this chapter.

D. Commissions. A survey of auctioneers will be made to determine the average commission rate for chattel sales in the area. Real estate commissions, if any, will follow the State supplement.

E. Legal Expense. A survey of local closing agents will be preformed to determine the cost FmHA will incur for closing transactions (title opinions, recorder's fees and the like).

F. Miscellaneous. Miscellaneous expenses such as land surveys, which are routinely incurred should be determined by a local survey and documented.

III. *Income.*

Income will be added to net recovery value only when it is relatively certain that the income will be realized. Lease income will not be planned unless a lease is already in effect at the time the calculations are being made, and it appears that the lease will continue after FmHA acquires title. The amount of mineral or other lease or royalty income will be based upon the historical record of such income generated by the property. Chattels will not generate income unless they have a holding period.

IV. *Depreciation*

The amount of depreciation anticipated for buildings and other improvements will be based upon the summation value and estimated remaining life of improvement as reflected in the real estate appraisal. For example, a dwelling with a summation value of $40,000 and a remaining life of 20 years will depreciate at a rate of $2,000 per year. The depreciation calculations will be documented in the borrower's case file and provided to the borrower upon request. Chattels will not be depreciated unless they have a holding period.

* * * * *

20. Exhibit L of Subpart S is revised to read as follows:

Exhibit L—Homestead Protection Program Agreement

This agreement is entered into this _____ day of _____, 19_____, by and between the Farmers Home Administration (FmHA) of the United States Department of Agriculture and _____ ("Borrower").

Concurrently, with the execution of the pre-acquisition Homestead Protection Program Agreement, the borrower will deliver a completed Form FmHA 1955–1 to FmHA. The Homestead Protection Program Agreement is subject to the provisions of 7 CFR part 1955, subpart A. If FmHA acquires title to the Homestead Protection property during the processing of a pre-acquisition Homestead Protection Agreement, processing of the agreement will be terminated and the owner will be given Homestead Protection rights pursuant to § 1951.911(b)(2)(iii) of 7 CFR part 1951, subpart S.

A. Borrower has received a loan or loans from FmHA secured by real property which includes the Borrower's dwelling, and adjoining land that is used to maintain the Borrower and the Borrower's family (the Homestead Protection property). In some cases the FmHA loan(s) may also have been included one or more outbuildings that are useful to the Borrower and the Borrower's family and in such cases these outbuildings are included in the definition of Homestead Protection property.

B. Borrower's FmHA loan is in default which could result in the loss of the borrower's Homestead Protection property.

C. Borrower wants to continue to occupy the Homestead Protection property after FmHA acquires title to it.

D. FmHA has already determined that Borrower has satisfied the requirements for its Homestead Protection Program.

E. FmHA agrees to permit Borrower to retain occupancy of the Homestead Protection property on the following terms and conditions:

1. Subject to the terms and conditions set forth below FmHA agrees to lease the Homestead Protection property, as more particularly described in Attachment 1

attached hereto, to Borrower on the terms and conditions set forth in the lease attached hereto as Attachment 2 (the "lease"). Borrower agrees to enter into the lease of the Homestead Protection property.

2. FmHA's obligation to enter into the lease of the Homestead Protection property is subject to the occurrence of the following conditions:

a. FmHA acquires fee title to the Homestead Protection property in connection with the liquidation of the farm property of which the Homestead Protection property is a portion.

b. All State and local governmental laws, ordinances and regulations concerning the creation of the Homestead Protection property as a separate legal parcel which can be leased and sold have been satisfied.

3. The term of the lease will begin on the date the later of the conditions set forth in paragraph 2 is satisfied and such date will be inserted into the lease.

4. The term of the lease will be _____ years. This term will be inserted in the lease.

5. The rent to be charged Borrower during the term of the lease will be determined by FmHA as of the commencement date of the lease and will be in an amount substantially equivalent to rents charged for similar residential properties in the area. This amount will be determined prior to execution of this agreement. The borrower will be notified by letter of the amount of the rent and the amount of the rent will be inserted in the lease form, Form FmHA 1955–20. If the Borrower disagrees with the rent determined by the County Supervisor, the borrower can appeal this determination pursuant to 7 CFR part 1900, subpart B.

6. Borrower agrees to cooperate with FmHA in applying for and securing whatever local governmental approvals are necessary in order for the Homestead Protection property to be a separate legal parcel. FmHA will bear the cost and expense of obtaining such approvals.

7. If the term of the lease has not started on or before 2 years from the date of the agreement, the agreement shall end and be of no further force or effect. The borrower may appeal this decision pursuant to 7 CFR part 1900, subpart B.

Farmers Home Administration

Borrower:

By: _____

_____

_____

Attachment 1, Legal Description of the Property.

Attachment 2, Lease Form, Form FmHA 1955–20.

21. Exhibit N of subpart S is revised to read as follows:

Exhibit N—Leaseback/Buyback Agreement

This agreement is entered into this _____ day of _____, 19____, by and between the Farmers Home Administration ("FmHA") of this United States Department of Agriculture and _____ ("Lessee").

Concurrently with execution of the agreement the borrower must deliver a completed Form FmHA 1955–10 to FmHA.

This agreement is subject to the provisions of 7 CFR part 1955, subpart A. If FmHA acquires title to the leaseback/buyback during the processing of a pre-acquisition Leaseback/Buyback Agreement, processing of the agreement will be terminated and the owner will be given leaseback/buyback rights pursuant to § 1951.911(a)(1)(ii) of 7 CFR part 1951, subpart S.

A. Lessee is eligible for the FmHA leaseback program under 7 CFR part 1951, subpart S, for the real property described on the enclosed Attachment 2 (the "leaseback property").

B. FmHA has not yet acquired title to the leaseback property but agrees to lease it to Lessee on the following terms and conditions when FmHA acquires clear title to it:

1. Subject to the terms and conditions set forth below, FmHA agrees to lease the leaseback property to Lessee on the terms and conditions set forth in the lease, Form FmHA 1955–20. Borrower agrees to enter into the lease of the leaseback property.

2. FmHA's obligation to enter into the lease of the leaseback property is subject to the occurrence of the following conditions.

a. FmHA acquires clear title to the leaseback property in connection with the liquidation of the owner's interest in that property.

b. If someone other than the Lessee is eligible for and has or may exercise Homestead Protection rights under 7 CFR part 1951, subpart S, the leaseback property will be reduced by the Homestead Protection property. FmHA's obligation to lease the remaining leaseback property is contingent on FmHA's determination that all State and local laws, ordinances and regulations concerning the creation of the Homestead Protection property as a separate legal parcel which can be leased have been satisfied.

3. The term of the lease will begin on the date the latter of the conditions set forth in paragraph 2 is satisfied and such date will be inserted into the lease.

4. The term of the lease will be _____ years. This term will be inserted in the lease.

5. The rent will be an amount equal to that for which similar properties in the area are being leased. This amount will be determined prior to the execution of this agreement and the agreed upon rent entered in the lease form, Form FmHA 1955–20. If the Lessee disagrees with the rents determined by the County Supervisor, the Lessee can appeal this determination pursuant to 7 CFR part 1900, subpart B.

6. The property, upon acquisition by FmHA, will be subject to any applicable USDA restrictions regarding the use of property containing wetlands, floodplains and/or highly erodible lands.

7. If the lease term has not started on or before 2 years from the date of this agreement, the agreement will end and be of no further force or effect. The borrower may appeal this decision pursuant to 7 CFR part 1900, subpart B.

Farmers Home Administration

Lessee

By: _____

_____

County Supervisor

_____

Date

Dated: September 6, 1991.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 91–25414 Filed 10–22–91; 8:45 am]

BILLING CODE 3410–07–M

7 CFR Part 1951

Availability of Loan Servicing Programs for Delinquent Farm Borrowers

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed action is being taken to amend the notices to delinquent Farmer Program (FP) borrowers to incorporate many of the changes provided for in Section 1816 of the Food, Agriculture, Conservation, and Trade Act of 1990 and other related provisions of the Act. This proposed action will reduce the very high costs of this program to the Government while still being able to assist FP borrowers to remain on the farm. The intended effect of this proposed action is to inform delinquent FP borrowers of the Debt Settlement Programs and of changes to Primary and Preservation Programs under the 1990 statute.

DATES: Written comments must be received on or before November 22, 1991.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations, Analysis and Control Branch (RACB) of the Farmers Home Administration (FmHA), USDA, room 6348, South Agricultural Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: A. Veldon Hall, Director, Loan Servicing and Property Management Division, Farmer Programs, Farmers Home Administration, USDA, room 5449, South Agricultural Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 447–4572.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been

reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Programs Affected

These proposed changes affect the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans (Section 502 Rural Housing Loans)
10.416—Soil and Water Loans

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded, with the exception of nonfarm enterprise activity, from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Background

Discussion of Proposed Rule

The Agricultural Credit Act of 1987, Public Law 100–233, amended the Consolidated Farm and Rural Development Act (CONACT) to require major changes in the servicing and restructuring of Farmers Home Administration FP borrower loans. These changes were implemented by an interim rule published in the **Federal Register** on September 14 1988 (53 FR 35638–35798). These amendments provide benefits to delinquent FP borrowers at a very high cost to the Government.

Section 1816 and other related sections of the Food, Agriculture, Conservation and Trade Act of 1990, Public Law 101–624, enacted on November 28, 1990, amended certain provisions of the CONACT to restrict benefits provided by the Agricultural Credit Act of 1987 in an effort to reduce Government costs while still assisting FP borrowers to remain on the farm or ranch.

To expedite the implementation of the various provisions of the Food, Agriculture, Conservation, and Trade Act of 1990, FmHA is publishing the revisions in the FmHA regulations in several separate issuances. Many of the provisions became effective on the date of enactment. The Notice of Debt Settlement provision became effective 120 days after the date of enactment of the Act. Until this proposed revision is made to the notices and the regulations are revised to incorporate additional statutory changes, however, FmHA is unable to use its servicing notice and offer debt restructuring to delinquent FP borrowers. The additional statutory changes limit FmHA's loan servicing and net recovery buyout programs, and amend the leaseback/buyback program to provide for environmental restrictions on wetlands and offer suitable inventory property to beginning farmers and ranchers.

This document proposes to revise Exhibit A with Attachments 1, 2, 3 and 4 of subpart S of part 1951 of chapter XVIII to make the necessary changes and some revisions for typographical corrections, grammar and clarity.

For example, it is proposed the Attachment 1 be clarified to state that to be eligible for homestead protection the applicant must be a former owner of the property, that entity members may receive leaseback/buyback, and that a borrower must sign a recapture agreement when receiving net recovery buyout. Additional proposed changes clarify the leaseback/buyback program. They make it clear that a borrower can apply for preacquisition leaseback/buyback only as a part of the primary loan servicing process, they clarify the priority of individuals and entities who may apply for leaseback/buyback, that FmHA's acceptance of a voluntary conveyance is not mandatory, and that FmHA's approval of a borrower's request for voluntary liquidation in lieu of foreclosure is required. These requirements either presently appear in FmHA's regulations, or resolve inconsistencies between Attachment 1 and the FP servicing regulations.

However, any changes to existing regulations will also be published as proposed rules in the near future. Although not part of this proposed rulemaking, FmHA is presently considering a proposal to require the borrower to submit copies of the most recent five years' tax returns as part of an application for primary loan servicing. FmHA intends to publish this proposal with its servicing regulations. However, if FmHA decides to adopt the proposal after public comment, the Attachment 1 servicing notice will be revised to require tax returns as part of the primary loan servicing application.

This document also proposes to revise FmHA's loan servicing notice (Attachment 1) to contain the following provisions of the Food, Agriculture, Conservation, and Trade Act of 1990:

Section 1802

(b) Limited Resource Authorization. (A borrower may be eligible for the limited resource interest rate for Soil and Water Loans.)

Section 1803

Interest Rate on Farm Ownership Loans and Operating Loans Made to Limited Resource Borrowers.

(a) Farm Ownership Loans. Subparagraph (B) of section 307(a)(3) (7 U.S.C. 1927(a)(3)(B)) is amended to read as follows:

"(B) Except as provided in paragraph (6), the interest rate on loans (other than guaranteed loans) under section 310D shall not be—

(i) Greater than the sum of—

"(I) An amount that does not exceed one-half of the current average market yield on outstanding marketable obligations of the United States with maturities of 5 years; and

"(II) An amount not exceeding 1 percent per year, as the Secretary determines is appropriate; or

"(ii) Less than 5 percent per year."

(b) Operating Loans. Paragraph (2) of section 316(a) (7 U.S.C. 1946(a)(2)) is amended to read as follows:

"(2) The interest on any loan (other than a guaranteed loan) to a low income, limited resource borrower under this subtitle shall not be—

(A) Greater than the sum of—

(i) An amount that does not exceed one-half of the current average market yield on outstanding marketable obligations of the United States with maturities of 5 years; and

(ii) An amount not exceeding 1 percent per year, as the Secretary determines is appropriate; or

"(B) Less than 5 percent per year."

Interest rates change frequently. Current interest rates are available at any FmHA office.

Section 1807

Notice of Loan Service Programs. (The Notice will include the debt settlement program.) Extends the borrower response time from 45 days to 60 days.

Section 1813

Disposition of Suitable Property.

(c) Property Subject to Borrower Purchase or Lease Option. (Only real farm or ranch property is eligible. The farm operator's off-farm principal residence is now subject to the purchase or lease option.)

(g) Offering Price. (Leaseback/Buyback property will be offered for sale at the appraised market value.)

Section 1815

Extension of Eligibility for Conservation Easements; Assistance to Borrowers.

(e)(2) (Setting out conditions under which FmHA may purchase a conservation easement from a borrower as payment on debt.)

Section 1816

Debt Restructuring and Loan Servicing.

(a) Eligibility for Restructuring. (If value of certain nonessential unsecured assets of borrower would bring loan current the borrower is not eligible for restructuring.)

(b)(1) Inclusion of Certain Nonessential Unsecured Assets of the Borrower in the Recovery Value. (Value of borrower's unsecured assets that are not essential for necessary family living or farm operation and are not exempt from judgment creditors or in bankruptcy are added to recovery value.)

(b)(2) Inclusion of Security Property Not Possessed By The Borrower. (For debt writedown and buyout.)

(c) Debt Service Margin. (Up to 105 percent of scheduled debt payment.)

(d) Deadline for Restructuring Calculations. (FmHA will have 90 days instead of 60 days to make a decision.)

(e) Good Faith Requirement For Leaseback/Buyback Eligibility. (Borrowers must have demonstrated good faith to be eligible for leaseback/buyback and buyout.)

(f) Termination of Loan Obligations. Borrowers have 90 days instead of 45 days to respond to the offer. They must have acted in good faith to be eligible. Recapture period extended to 10 years.

(g) Appraisals (Provides for a compromise or negotiated value of appraised property.)

(n) Only 1 Writedown or Net Recovery Buyout Per Borrower For A Loan Made After January 6, 1988.

(o) Liquidation of Assets. (FmHA cannot reduce or write off any debt that borrower could pay by liquidating certain nonessential unsecured assets, or by borrowing against the equity of those assets.)

(p) Lifetime Limitation on Debt Forgiveness Per Borrower. (The limit is $300,000.)

The regulatory text provides an actual description of the proposed revisions. When these changes are implemented in FmHA's regulations FmHA will be able to offer the revised servicing options to delinquent FP borrowers who file applications for servicing on or after November 28, 1990, the date of enactment of the Act.

List of Subjects in 7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Debt Restructuring.

Therefore, as proposed, chapter XVIII, part 1951, title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart S—Farmer Programs Account Servicing Policies

2. Exhibit A with Attachments 1, 2, 3 and 4 of Subpart S is revised to read as follows:

Exhibits to Subpart S

Exhibit A—Notice of the Availability of Loan Service and Debt Settlement Programs for Delinquent Farm Borrowers

Note to County Supervisor:

This Exhibit will be sent to all borrowers who are at least 180 days behind schedule on their farmer program payments.

Dear (Borrower's Name):

This notice is to inform you that you are seriously behind with your loan payments and to inform you of your options. Farmers who are more than 180 days late in making payments have several options.

I. Loan Service Programs Available

Primary loan service programs are intended to help change the debt so that you can continue farming and the FmHA will lose less on the money it loaned you.

Preservation loan service programs are intended to help farmers who may lose their land to FmHA get their farmland and/or their home back through a lease with an option to buy.

Debt settlement programs are intended to help farm borrowers who cannot pay their total FmHA debt in full. Under these programs, the debt you owe FmHA may be settled for less than the amount you owe. FmHA will suspend or stop trying to collect any of the remaining debt.

II. Application Information

Time Limits

You must notify FmHA within 60 days of getting this notice if you want these programs.

How to Apply

To apply, you must complete and return the required forms you get with this notice, including your signed Acknowledgement of Notice of Program Availability within the 60-day time limit.

How Soon Will You Know if You Qualify

FmHA has 90 days to process your completed forms and let you know if you qualify.

Included With This Notice You Will Find:

(1) A summary of primary loan service programs options

(2) A summary of preservation loan service programs

(3) A summary of debt settlement programs

(4) The forms you need to apply for services

(5) Information on how to get copies of FmHA regulations

(6) A description of the FmHA appeals process.

III. Foreclosure and Liquidation

What Happens if You Do Not Apply Within 60 Days?

FmHA will take steps to begin the acceleration of your loan. Acceleration of your loan is very severe. This means FmHA will take legal action to collect all the money you owe them.

FmHA will start foreclosure proceedings. They will repossess or take legal action to take any real estate, personal property, crops, livestock, equipment, or any other assets in which FmHA has a security interest. FmHA will also stop allowing you to use your crop, livestock, and milk checks to pay living and operating expenses. FmHA may also take by administrative offset money which other federal agencies owe you.

Sincerely,

County Supervisor
Farmers Home Administration
United States Department of Agriculture

Attachment 1—Primary and Preservation Loan Service and Debt Settlement Programs Purpose

Note to County Supervisor:

This attachment will be provided to every borrower who requests Primary and/or Preservation Loan Servicing Programs and to every borrower FmHA contacts in regard to either monetary or non-monetary default.

Purpose

These FmHA programs are to help you repay the loan and keep your farm property and settle your debt to FmHA. This notice tells you:

(1) How to get more information
(2) How to apply
(3) Your appeal rights if you apply and are turned down

How to Get More Information

Ask at any FmHA County Office for copies of the FmHA rules describing these programs. These rules must be given to you within 10 days.

Who Can Apply?

All "farmer program borrowers" who have one of the following loans:

Operating (OL)
Farm Ownership (FO)
Emergency (EM)
Economic Emergency (EE)
Soil and Water (SW)
Recreation (RL)
Rural Housing Loans made for farm service buildings (RHF) Economic Opportunity (EO)

You May Need Help in Applying

The legal requirements for these programs are very complicated. You may need help to understand them. You may want to ask an attorney to help you. If you cannot get an attorney, there are organizations that give free or low-cost advice to farmers. Ask your State Department of Agriculture or the USDA Extension Service what services are available to your state.

Note: FmHA County Supervisors cannot recommend a particular attorney or organization.

I. Primary Loan Service Programs

(1) Loan Consolidation

Two or more of the *same type* of loans can be combined into one larger loan. For example, operating loans can only be joined with operating loans and farm ownership loans with farm ownership loans.

(2) Loan Rescheduling

The payment schedule can be altered to give you longer to repay loans secured by equipment, livestock, or crops. For example, the time for repayment of an operating-type loan can be extended up to 15 years. When a loan is rescheduled, the interest rate may be reduced.

(3) Loan Reamortization

The payment schedule can be changed to give you longer to repay loans secured by real estate. For example, a Farm Ownership loan payback period may be extended to 40 years from the date the original loan was signed. When a loan is reamortized, the interest rate may be reduced.

(4) Interest Rate Reduction

Regular Interest Rate

FmHA has specific interest rates for each type of loan. These interest rates change quite often. They depend on what it costs the government to borrow money. Each type of loan will have a regular rate.

Limited Resource Interest Rate

If you have an Operating Loan (OL), Soil and Water (SW) loan or a Farm Ownership (FO) loan, it may be possible for you to get a "limited resource interest rate." The limited resource interest rate can be as low as 5 percent. It changes quite often and depends on what it costs the government to borrow money.

Interest Rate for Loan Servicing

When loans are consolidated, rescheduled, or reamortized, the interest rate on the new loan will be either the interest rate on the original loan or the current regular rate of interest for that type of loan, whichever is less. The borrower may be able to get the limited resource interest rate on OL, SW, or FO loans.

For information about current interest rates, contact the FmHA County Office.

(5) Loan Deferral

Payments of principal and interest can be temporarily delayed for up to 5 years. You must show that you cannot pay essential living expenses or maintain your property and pay your debts. You must also show you will be able to pay at the end of the delay period.

The interest rate on a deferred loan will be either the current rate of interest for loans of the same type or the original rate on the loan, whichever one is lower.

The interest that builds up during the delay period will not be added to the principal of the loan. You must pay this interest in equal yearly payments for the rest of the loan term.

Note: You can only get a loan deferral if the FmHA decides options 1–4 will not work for you.

Note: FmHA Softwood Timber Programs. Marginal land including highly erodible land and pasture can be planted in softwood timber. If you qualify, a debt of up to $1000 an acre can be deferred up to 45 years. Interest will be charged during the deferral period. The debt must be paid when the timber is sold.

Note: Conservation Easements. Use of highly erodible land, wetlands, or wildlife habitat can be signed over to the Secretary of Agriculture for a reduction in your debt. The amount of land left after the conservation easement must be enough to continue your farming operation.

(6) Debt Writedown

This means the FmHA debt you owe is reduced. FmHA can reduce both the principal and interest of your debt. Your debt can be reduced to the recovery value.

Recovery value. The recovery value is (1) the fair market value of the collateral in your possession, minus all of the expenses such as sale costs, attorneys fees, management costs, taxes and prior security interests in the collateral that FmHA would have to pay if it foreclosed on and sold the collateral in your possession plus (2) the fair market value of any collateral that is not in your possession and has not been released in writing, by FmHA from your mortgage minus the value of any creditors' prior security interests plus (3) the fair market value of any other assets that you may own that are not essential for necessary family living or for farm operation, and are not exempt from your judgment creditors or in a bankruptcy action, minus the value of any creditors' prior security interests and your selling costs. The value of the collateral and any other assets must be decided by a qualified appraiser.

In order to get debt writedown, you must show that you will have enough money to pay all of your family living and farming operating expenses and up to 105 percent but not less than 100 percent of your scheduled debt payments. This includes making payments on the FmHA loan once part of the loan is written down. This means you must show that you have a feasible plan of operation. FmHA will never write down more of the debt than is necessary for you to show a feasible plan.

The writedown is used only when the loan servicing programs listed in programs 1–5 above alone will not be enough for you to show a feasible plan. If you get writedown, some of the principal and interest on your loan(s) will be written down in addition to changing the payback period, and possibly the interest rate, using programs 1–5 above.

You can receive only one writedown or one buyout for farmer program loans made after January 6, 1988. (See Part VIII of this notice for a discussion of buyouts.) However, if you received a writedown after January 6, 1988, for a farmer program loan made on or before January 6, 1988, you may receive one more writedown. Also, you can only receive a maximum lifetime limit of $300,000 for writedown.

II. Who Can Qualify for Primary Loan Service Programs

To qualify you must prove that:

(1) You cannot repay your FmHA debt due to circumstances beyond your control. If you have certain assets that you could use to bring your account current, then you are not eligible for Primary Loan Service Programs. These assets include only those that are not essential for necessary family living or for your farm operation.

FmHA cannot reduce or write off any of your debt that you could pay by selling any of these assets or borrowing against your equity in the assets. You must have had less money than expected due to such things as:

(a) A natural disaster, weather, or insect problems,
(b) Family illness or injury,
(c) Loss or reduction of off-farm income,
(d) Disease in your livestock,
(e) Low commodity prices and high operating expenses in your local area, or
(f) Other circumstances beyond your control; and

(2) You have honestly acted in "good faith" and tried to keep your agreements with FmHA in that you have kept agreements for the use of proceeds and release of property used to secure the loan, and your file shows no fraud, waste, or conversion.

Who Will Decide if You Qualify?

The FmHA County Supervisor will decide if you qualify. The County Supervisor will decide whether you can pay as much or more on the loan as FmHA would get if they foreclosed and sold the collateral for the loan and any nonessential assets. To do this, the

County Supervisor must decide whether you can pay at least as much as the "recovery value" explained under Part I (6) above.

How Soon Will You Know?

Within 90 days from the day you apply you will get a copy of the County Supervisor's analysis and decision.

Can You Get Your Debts Written Down?

Only if FmHA will get as much or more by writing down part of your debt than through foreclosure or sale of the collateral for the loan and any nonessential assets.

Conditions of the New Agreement if You Qualify

You must sign a shared appreciation agreement. Under the terms of the agreement:

- You must repay a part of the sum written down.
- The amount you must repay depends on how much your real estate collateral increases in value.
- The shared appreciation agreement will not last longer than 10 years.

During this 10 years, FmHA will ask you to repay part of the debt written down if you do one of the following things:

(1) Sell or convey the real estate

(2) Stop farming

(3) Pay off the entire debt

If you do not do one of these things during the 10 years, FmHA will ask you to repay part of the debt written down at the end of the 10 years.

FmHA can only ask you to repay if the value of your real estate collateral goes up.

In the first four years of the agreement, FmHA will ask you to pay 75 percent of the increase in value of the real estate. In the last 6 years, you will be asked to pay only 50 percent of the increase in value. However, FmHA can never ask you to pay more than the amount of the debt written down.

Mediation of Other Loans

If you cannot show a feasible farm plan because you owe too much to other creditors and suppliers, FmHA will help you try to get your other creditors to adjust your debts. This will be done by FmHA asking for mediation if your state has a mediation program approved by the Department of Agriculture. If there is no state mediation program, FmHA will try to set up a meeting with your other creditors and suppliers.

Date to Begin Agreement

If you are found eligible, you will be informed of the date for an appointment so your debt can be restructured. You must notify FmHA that you accept its offer to restructure your debt within 45 days of when you receive the offer.

III. Preservation Loan Service Programs

Purpose

These programs apply when the primary loan service programs cannot help you.

Programs Available

(1) Homestead Protection. (Keeping your farm home.) You may lease your farm home and outbuildings plus a limited amount of land. The limit on the land you can retain is up to 10 acres. The lease time will be for up to 5 years. The lease will include an option to buy back the property you lease.

(2) Farmland Leaseback/Buyback. You can either lease or buy back your farm and ranch real property. This includes any on-farm residence, and any off-farm principal residence of the farm operator securing your FmHA loan from FmHA. (The lease will contain an option to buy.)

IV. Who Can Qualify for Homestead Protection?

(1) Your gross annual income from your farm and/or ranch must be similar to other comparable operations in your area. This must be true for at least 2 years of the last 6 years.

(2) Sixty percent (60%) of your gross annual income in at least 2 of the last 6 years must have come from the farming operation.

(3) You must have lived in your homestead property for the 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you still may qualify.

(4) If FmHA has already taken your property, you must apply within 90 days of the date FmHA took your property. (FmHA must notify you within 30 days of taking your property.)

(5) You must be the owner or former owner of the property.

How to Lease Your Dwelling

(1) You may lease your home and up to 10 acres if you pay FmHA reasonable rent. The rent prices FmHA charges you must be similar to comparable property in your area.

(2) You must maintain the property in good condition during the term of the lease.

(3) You may lease for up to 5 years.

(4) You cannot sublease your property.

(5) If you do not keep up your rental payments to FmHA, FmHA will evict you and force you to leave. Before FmHA forces you to leave, they must let you appeal. FmHA must also follow the laws of your state.

Note: You can buy back your property at current market value at any time during the lease. FmHA may place an easement on your property to protect and restore any wetlands or converted wetlands. Current market value will be decided by an independent appraiser. The appraisal will be made within 6 months of your application for homestead protection. The appraised value of your property will reflect the value of the land due to any placement of a wetland conversion easement.

V. How to Lease Back or Buy Back Farmland Property

Under certain conditions you may lease or buy back your farm and ranch real property. If you applied for primary loan servicing, and do not qualify (see Part VIII below), you will automatically be considered for leaseback/buyback. You can also apply after FmHA takes title. If FmHA does not get title to your land because someone else buys it, you will not get leaseback/buyback.

How Long Do I Have to Decide?

If FmHA takes your farmland, you will have 180 days after FmHA takes it to apply to purchase or lease your property. (Some states give you a longer time period.)

Who Can Apply to Buy or Lease Back? (See next page for the order of these rights)

(1) Buybacks or leaseback rights apply to you, your spouse, and any of your children if they also have been actively involved in farming.

(2) Members of family-held corporations if the corporation had the loan from FmHA and if the family member is actively engaged in farming.

(3) Members of family partnerships or joint operations who were responsible to pay the FmHA loan and if the family member is actively engaged in farming.

(4) A tenant operator (lessee) who operated the farm.

Note: You must notify your family of their right to lease or buy back. If you are an entity, you must notify the entity members of this right. If you leased the property when FmHA took it into inventory, please tell FmHA the name and address of the lessee. FmHA will then notify the lessee. Your spouse and your children's rights, and the rights, of entity members, exist only if FmHA takes the property into inventory.

You should be aware that any real property, located in special areas or having special characteristics, which comes into FmHA's inventory, may have restrictions and/or easements placed on the property which prevent your use of all or a portion of the property, should you choose to lease or buy your former farm and/or dwelling. These restrictions and encumbrances will be placed in leases and in deeds on farms containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible soils.

Order of Rights to Buy or Lease Back.

(1) The former owner has first right. His/her rights to be considered will last for 180 days from the time FmHA gets title to the land.

(2) The former owner's spouse or children (if the former owner was an individual) has the second right. However, if the former owner was an entity, then the entity members of a corporation, partnership, joint operation or cooperative have the second right to buy or lease back. Their right to be considered will last for 10 days after the owner's ends (*i.e.*, 10 days after the 180 days).

(3) The operator, if he/she is not owner of the property and was operating the property when FmHA took it into inventory, has the third right. The operator has 30 days after receipt of a later notice about leaseback/buyback to notify FmHA.

Note: If the land is on an Indian reservation and was owned by a tribe member, FmHA will make special offers to tribal members. FmHA will do this after the time for owner/family leaseback/buyback has passed.

Who Can Quality for Buybacks Financed by FmHA or Leasebacks?

(1) You must have enough financial and management skills to show you will be successful in the farming operation.

Note: If you get financing from someone other than FmHA, you will need to meet the requirement of the lender for financial and management skills

(2) You must give FmHA a farm plan that shows you have a reasonable chance of being successful.

(3) The rental price must be based on reasonable rent for the same type of property in your area.

(4) The purchase price will be the property's appraised market value.

(5) You must have honestly acted in "good faith" and tried to keep your agreements with FmHA in that you have kept agreements for the use of proceeds and release of property used to secure the loan and your file shows no fraud, waste, or conversion.

VI. Debt Settlement Programs

Purpose

These programs apply when primary loan service programs cannot help you. You may be eligible for both debt settlement and preservation loan service programs if you still have FmHA collateral. If you do not have FmHA collateral you may want to apply for debt settlement only. See Part VII–10 and the "Note" below Part VII for information about how to apply. Debt settlement programs are intended to help farmers who cannot pay their total FmHA debt in full. Under these programs, the debt you owe FmHA may be settled for less than the amount you owe. FmHA will suspend or stop trying to collect any of the remaining debt.

Programs Available

(1) Compromise—A lump-sum payment of less than the total FmHA debt owed.

(2) Adjustment—One or more payments of less than the total amount owed to FmHA. Your payments can be spread out over a maximum of five years if FmHA decides you will be able to make the payments as they become due.

(3) Cancellation—The final settlement of a debt without any payment. FmHA must decide there is no FmHA security or other assets from which FmHA can collect. You must be unable to pay any part of the debt now or in the future.

(4) Chargeoff—FmHA may use this option to write off debt and terminate collection activity without release of your personal liability for the FmHA debt. The same conditions for cancellation apply here.

Approval Requirements

If you sell your collateral, you must apply the proceeds from the sale to your FmHA account before you can be considered for debt settlement. In the case of compromise and adjustment, however, you may keep your collateral if you are unable to pay your total FmHA debt and offer to pay FmHA the present fair market value of your collateral and any additional amount you are able to pay as determined by FmHA. You will be allowed to retain a reasonable equity in essential nonsecurity property to continue your normal operations and meet minimum family living expenses. FmHA will not finance a compromise or adjustment offer.

All debt settlements of farmer program loans must be recommended by the FmHA County Committee with a finding that the statements on your application are true. The committee must certify that you do not have assets or income in addition to what you stated in your application. If you qualify, your application must also be approved by the FmHA State Director or the FmHA Administrator depending on the amount of the settlement.

VII. How to Apply for Primary and Preservation Loan Servicing and Debt Settlement Programs

Forms to apply for primary and preservation loan servicing and debt settlement programs.

These forms should be included with this notice. If they are not, you can obtain them from the FmHA County Office or as directed below.

Form Number Title

(1) FmHA 410–1 Application for FmHA Services
(The financial statement on this form must include information no more than 90 days old. The financial statement must be for all individuals, corporations, or partnerships personally liable for the FmHA debt.)
(2) FmHA 410–8 Application Reference Letters
(3) FmHA 410–9 Statement Regarding Privacy Act
(4) FmHA 431–2 Farm and Home Plan
(5) FmHA 440–32 Request for Statement of Debts and Collateral
(6) FmHA 1910–5 Request for Verification of Employment
(7) FmHA 1924–1 Development Plan (if you are planning to make major changes in your farming operation)
(8) SCS–CPA–026 Highly Erodible Land and Wetland Conservation Determination (This form must be obtained from and completed in the Soil Conservation Service office.)
(9) AD–1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification (This form must be obtained from and completed in the Agricultural Stabilization and Conservation Service office.)
(10) FmHA 1956–1 Application For Settlement of Indebtedness (Complete this form only if you wish to apply for debt settlement.)

Note:

For Homestead Protection only, obtain the Agricultural Stabilization and Conservation Service or Soil Conservation Service photo of the farm. Show the homestead site you wish to apply for.

For Conservation Easement only, obtain the Agricultural Stabilization and Conservation Service or Soil Conservation Service photo of your farm. Show approximate number of acres you wish to use for a conservation easement.

For Debt Settlement only, complete only Form FmHA 1956–1. You do not need to complete the other forms if you only want to apply for debt settlement. If you want to apply for primary and preservation loan servicing and debt settlement, complete ALL the forms.

Time to Apply

You must complete the appropriate forms and return them to the FmHA office within 60 days from the date you received this notice FmHA will not consider you for the loan service programs until it gets all of these completed forms. You can apply for debt settlement at any time unless your account has been sent to the Department of Agriculture's Inspector General or the Office of the General Counsel for a suspected criminal violation, or the United States Attorney for collection.

VIII. What Happens When You Are Not Eligible for Primary Loan Service Programs?

If the County Supervisor decides you are not eligible, you may request a meeting with the County Supervisor so he/she can explain the decision. If you think the County Supervisor's decision is wrong, you can tell him/her why. If you can make the necessary changes to your Farm and Home Plan to show a feasible plan, you should show these changes to the County Supervisor.

You Have the Right to Appeal

(1) Appeal Hearing. If you do not convince the County Supervisor that you should get primary loan servicing, you have a right to appeal the decision. The County Supervisor must send you a letter after the meeting that explains his/her decision. The letter must also say you have 30 days to ask for an appeal hearing. You can present witnesses and documents and ask FmHA questions at the hearing. The appeal hearing is recorded, and you can get a copy of the transcript of the hearing if you pay for the copying costs.

(2) Review. If you do not win at the appeal hearing, FmHA must tell you why and let you ask for a review of that decision. The transcript and the documents used at the hearing will be reviewed when you ask for a review of the appeal hearing decision.

You Have the Right to Negotiate your Appraisal

If you object to the FmHA appraisal of your property, based upon your own current appraisal, you may ask the FmHA, in writing, to negotiate the appraisal with you. You must ask to negotiate the FmHA appraisal within 30 days from the date you receive this notice. To do this you must ask for an independent appraisal of your property. You and FmHA will choose an independent appraiser to complete the third appraisal. You must pay one-half of the cost of the appraisal. The FmHA will pay for the other half of the appraisal. Following the completion of the third appraisal, the average of the two appraisals that are closest in value shall become the final appraisal.

You May Buyout (Pay Off) Your Loan at the "Recovery Value"

(1) Recovery Value. If the analysis of your debt shows that you cannot "cash flow" even if your debt to FmHA is reduced to the recovery value of the collateral, the County Supervisor will send you a letter saying you can buyout the loan by paying the "recovery value." The recovery value is described in more detail in section I (6) of this notice.

(2) Limits. You can receive only one buyout for farmer program loans made after January 6, 1988. However, if you received a writedown after January 6, 1988, for a farmer program loan made on or before January 6,

1988, you may receive a buyout. Also, for a buyout, FmHA can write off a maximum of $300,000 from your FmHA debt.

(3) Eligibility. To qualify you must prove that:

You cannot repay your FmHA debt due to circumstances beyond your control and,

You have acted in good faith and tried to keep your agreements with FmHA and,

The value of your restructured loan is less than the recovery value.

(4) Time Limit. If you want to pay off the loan at "recovery value," you must pay FmHA within 90 days of the date you receive the letter. If you appeal the County Supervisor's decision not to give you primary loan servicing, this 90 days will not start until all of the appeals end.

(5) Cash. If you pay off the loan, you must pay in cash. FmHA will not make or guarantee a loan for this purpose.

(6) You Must Sign a Net Recovery Buy Out Recapture Agreement.

The agreement asks you to repay all or part of the amount FmHA writes off your debt if you sell or otherwise convey your real estate collateral. The amount you repay depends upon the market value of your real estate collateral on the date you sell or otherwise convey it.

The agreement will not last longer than 10 years.

Consideration for Preservation Loan Service Programs

You will be considered for preservation loan service programs if:

(1) You applied for primary loan servicing on time and did not qualify.

(2) You do not appeal your primary loan servicing denial, or do not win your appeal.

(3) You do not pay off the loan at recovery value.

FmHA will consider you for preservation loan service programs after the 90-day time period you have to pay off the loan at recovery value.

Consideration for homestead protection and/or farmland leaseback/buyback.

You will be considered for preservation loan service programs if you:

(1) Meet the conditions described above, and

(2) Agree to give FmHA title to you land at the time FmHA signs the written homestead protection and/or farmland leaseback/buyback agreement with you. FmHA will not accept title and will deny your preservation request if it is not in FmHA's financial interest to accept title. FmHA will figure the costs of taking title including the cost of paying other creditors who have outstanding liens on the property. FmHA will take title only if it can obtain a recovery on its investment. Any written agreement for preservation loan servicing will include the amount you must pay for rent, the number of years you can rent, and an option to buy.

FmHA may consider you for homestead protection and farmland leaseback/buyback on your real estate and, at the same time, consider you for buyback of your equipment and any other non-real estate collateral at market value.

Consideration for Debt Settlement Programs

If you applied for debt settlement only, you will be considered after you return Form FmHA 1956–1. If you applied for all programs, FmHA will consider debt settlement at the same time it considers you for preservation loan servicing.

IX. What Happens when You Are Turned Down for Preservation Loan Service Programs and/or Debt Settlement Programs?

You Can Appeal

If FmHA decides that you cannot get homestead protection and/or farmland leaseback/buyback and/or debt settlement you can ask for:

(1) A meeting with FmHA to discuss the decision, and

(2) An appeal hearing.

The Right to a Meeting

The County Supervisor will send you a letter telling you why FmHA decided not to give you homestead protection or farmland leaseback/buyback and/or debt settlement. That letter will give you 15 days to ask for a meeting with FmHA.

The Right to an Appeal Hearing

If you do not convince FmHA at the meeting to change their decision, FmHA will send you another letter giving you 30 days to request an appeal hearing.

At the appeal hearing, you can contest FmHA's rental price and its decision not to give you homestead protection and/or farmland leaseback/buyback. You can also contest FmHA's decision to reject your debt settlement application.

The Right to a Review

If you do not win the appeal hearing, FmHA must let you ask for a further review. The recorded transcript of the hearing will be reviewed at this stage. You can get a copy of the transcript by paying the copying costs.

X. What Happens if You Do Not Win the Appeal for Preservation Loan Service Programs and/or Debt Settlement Programs?

FmHA will accelerate your loan account and call in the whole debt. FmHA will stop allowing you to use any of your crop, livestock, and milk checks on which they have a claim to pay for living and operating expenses. FmHA will also repossess the collateral or start legal foreclosure or liquidation proceedings to take and sell the collateral, including your equipment, livestock, crops, and land. After acceleration FmHA may also take by administrative offset money which other Federal Government agencies owe you.

FmHA will take this action unless you do one of the following things with FmHA's approval:

(1) Sell all the collateral for the loan at market value.

(2) Convey (legally transfer) the collateral to FmHA.

(3) Apply to transfer the collateral to someone else and have that person assume all or part of the FmHA debt. (This is called transfer and assumption.)

If any of these options result in payment of less than you owe, you may apply or re-apply for debt settlement. You may apply or re-apply for homestead protection and farmland leaseback/buyback if FmHA gets title to your land or home through a foreclosure action or conveyance. You may re-apply for these programs even if you applied before and did not get one of these programs and were not successful on appeal. However, applications for leaseback/buyback of debt settlement filed after the 60-day time period provided in this notice will not delay acceleration and foreclosure.

Attachment 2—Acknowledgement of Notice of Program Availability

Note to County Supervisor:

This attachment will be provided to every borrower who requests Primary and/or Preservation Loan Servicing Programs, and to every borrower FmHA contacts in regard to monetary default.

I/We have been given a notice explaining the primary and preservation loan service and debt settlement programs.
The date on the notice was _____.

This notice explained that FmHA programs are available to help me keep my property and settle my debt to FmHA.

I/We ask FmHA to consider me/us for all of these programs.

I understand that I will be notified of my rights to appeal after FmHA decides on my request.

_____

Signature

_____

Date

Attachment 3—Notice to Borrowers with Non-Monetary Defaults, Non-Monetary Defaults and Delinquency, or that a Prior Lienholder or Junion Lienholder is Foreclosing

Note to County Supervisor:

This attachment will be used to notify borrowers with non-monetary defaults, borrowers with both non-monetary and monetary defaults, and borrowers where a prior or junior lienholder is foreclosing.

Dear _____

FmHA has reviewed your loan account. Our record shows:

[ ] You are now $_____ behind on your payments. This is a violation of your loan agreement.

[ ] You have disposed of some of your property used to secure your loan. You did not get written approval for this. This property is _____

_____

(Describe property.)

[ ] You have stopped farming or ranching. This is a violation of your loan agreement.

[ ] A foreclosure action has been filed against you by _____. This is a violation of your loan agreement.

[ ] You have _____

_____

(Insert reasons for proposed action.)

FmHA Will Accelerate Your Loans

This means FmHA will take legal action to collect the money you owe. They will foreclose on real estate and repossess equipment and other property used to secure your loans. They will also stop the release of money from the sale of crops or other property. They may take by administrative

offset money you are owed by other Federal agencies.

Steps You Can Take Before FmHA Accelerates Your Loans

You can apply for the programs described in Attachment 1. These are called Primary and Preservation Loan Service and Debt Settlement Programs. You can also ask for a meeting. At this meeting you can explain why you think FmHA's records, as indicated on this Notice, are wrong. You can also suggest things you can do to correct these problems, so as to avoid acceleration and foreclosure. You can request loan servicing, debt settlement and a meeting at the same time. For example, if this Notice states that you are delinquent, and also have disposed of property without FmHA's written consent, you can request servicing to deal with the delinquency problem and request a meeting on the question of unauthorized disposition of property.

Forms Attached to This Notice

You will find:

(1) A summary of all primary loan service programs;

(2) A summary of preservation loan service programs;

(3) A summary of all debt settlement programs;

(4) Copies of the forms needed to apply;

(5) Advice on how to get copies of FmHA regulations;

(6) A short description of the FmHA appeal process.

Purpose of Primary Service Programs

These loan service programs are to help you repay the loan and keep your farm property.

Purpose of Preservation Loan Service Programs

These programs are intended to help farmers who may lose their land to FmHA to get their farmland and their home back through a lease with an option to buy.

Purpose of Debt Settlement Programs

Debt settlement programs are intended to help borrowers who cannot pay their total FmHA debt in full. Under these programs, the debt you owe FmHA may be settled for less than the amount you owe. FmHA will suspend or stop trying to collect any of the remaining debt.

How to Apply for Loan Servicing and Debt Settlement

Complete Attachment 4 and the appropriate forms included with this notice.

You must return these within 60 days of getting this notice.

Right to a Meeting

You have the right to meet with your FmHA County Official before they decide to accelerate your loan. You must check the box on Attachment 4 saying you want a meeting. (Attachment 4 is the "Response to Notice of Intent to Accelerate and Notice of Borrower Rights.")

How to Ask for a Meeting

You must check the box on Attachment 4 asking for a meeting within 15 days from the date of this notice. Return it to you County Office. Do this as soon as possible. It is wise to call also to set up the meeting.

Note: If you ask for loan servicing and/or debt settlement, the meeting will be delayed until a decision on your loan servicing and/or debt settlement request is made.

The Right to Appeal

- You can ask for an administrative appeal even if the meeting does not resolve your problems.
- You can ask for an appeal even if you do not have a meeting.
- You have the right to appeal even if you do not want to apply for loan servicing programs and/or debt settlement.

How to Ask for an Appeal

Check the box on Attachment 4 and mail it to your County Office within 30 days of getting this notice.

Note: If you do not check the box on the Attachment 4 to ask for primary and preservation loan service and debt settlement programs you will not be considered.

If you do not ask for a meeting you will not get one. You may still appeal by asking for an administrative appeal on the attached form.

The Right Not To Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because all or part of your income is from a public assistance program.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,
County Supervisor
Farmers Home Administration
United States Department of Agriculture

Date: _____

Attachment 4—Response to Notice Informing me of FmHA's Intent to Accelerate my loan

Note to County Supervisor:

This attachment will be included with Attachment 3 when contacting a borrower about non-monetary default, non-monetary default and delinquency, and when a prior or junior lienholder is foreclosing.

Notice of My Rights

TO: County Supervisor, Farmers Home Administration

FROM: _____

(Please print your name and address.)

I have read the notice informing me of FmHA's intent to accelerate my loan which I received with this form.

I want to: (*Check one or more of the following boxes*)

[☐] 1. Request a meeting with the FmHA County Office.
My phone number is _____
I must return this form in *15 days*.
I understand I do not lose my right to appeal by asking for a meeting.

[☐] 2. Be considered for *all* primary and preservation loan service and debt settlement programs. I must return this form in *60 days*.

[☐] 3. Have an administrative appeal hearing. I understand that I will be contacted by FmHA's National Appeals Staff to set up the appeal hearing date and give me more information.
I must return this form in *30 days*.

Date: _____
Signature: _____
(Sign here.)

Date: September 9, 1991.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 91-25413 Filed 10-22-91; 8:45 am]

BILLING CODE 3410-07-M

federal register

Wednesday
October 23, 1991

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Kalamazoo/ Battle Creek International Airport Radar Service Area; MI; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AWA-20]

Proposed Establishment of the Kalamazoo/Battle Creek International Airport Radar Service Area; MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish an Airport Radar Service Area (ARSA) at Kalamazoo/Battle Creek International Airport, Kalamazoo, MI. This location is a public airport at which a Terminal Radar Service Area (TRSA) is currently in effect. Establishment of this ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at the affected location would promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

DATES: Comments must be received on or before December 23, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No. 90-AWA-20, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

The informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Patricia Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AWA-20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1-2 concluded that TRSAs should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was recommended by a consensus.

The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83-9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSAs at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSAs were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSAs were permanently established at the Austin, TX, Columbus, OH, and the Baltimore/Washington International Airports (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSAs at locations other than those which are included in the TRSA replacement program. The task group recommended that these criteria include among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. These criteria have been developed and are being published via the FAA directives system.

The FAA has established ARSAs at 122 locations under a paced implementation plan to replace TRSAs with ARSAs. This is one of a series of notices to implement ARSAs at locations with TRSAs or locations without TRSAs which warrant implementation of an ARSA. This notice proposes an ARSA designation at a location which was identified as a candidate for an ARSA in the preamble to Amendment No. 71-10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the **Federal Register**.

The Current Situation at the Proposed ARSA Location

Kalamazoo/Battle Creek International Airport is a public airport with an operating control tower served by a

Level III Radar Approach Control Facility, at which a TRSA is in effect. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR). TRSA airspace and operating rules are not established by regulation, and participation by pilots operating under VFR is voluntary, although pilots are urged to participate. This level of service is known as State III and is provided at all locations identified as TRSAs.

A number of problems with the TRSA program were identified by the NAR Task Group. The task group stated that, because of the different levels of service offered in termainal areas, such as Kalamazoo/Battle Creek International Airport, users are not always sure of what restrictions or privileges exist or how to cope with them. According to the NAR Task Group, there is a shared feeling among users that TRSAs are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. The consensus among the user organizations is that within a given standard airspace designation, a terminal radar facility should provide all pilots the same level of service and in the same manner, to the extent feasible.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish an ARSA at Kalamazoo/Battle Creek International Airport, Kalamazoo, MI. This location is a public airport with an operating control tower served by a Level III Radar Approach Control Facility, at which a TRSA is in effect.

The FAA published a final rule (50 FR 9252; March 6, 1985) which defines an ARSA and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA. The final rule provides, in part, that all aircraft arriving at any airport in an ARSA or flying through an ARSA, prior to entering the ARSA, must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area; and (20 while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established with the ATC facility having jurisdiction over the area as soon as practicable after takeoff and thereafter maintained while operating within the ARSA (14 CFR 91.130).

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions. However, the rule permits ATC to authorize appropriate deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may be conducted only under the terms of an ATC authorization.

The FAA adopted the NAR Task Group recommendation that each ARSA be of the same airspace configuration insofar as is practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport, extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviations from this standard have been necessary at some airports because of adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSAs may be found in §§ 71.14 and 71.501 of part 71 and §§ 91.1 and 91.130 of part 91 of the Federal Aviation Regulations (14 CFR parts 71, 91).

Regulatory Evaluation Summary

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if benefits to society for each regulatory change outweigh potential costs. Accordingly, the FAA has prepared a detailed preliminary economic evaluation of this proposal and placed it in the docket. The evaluation identifies and analyzes both the quantifiable and nonquantifiable economic effects of the proposal. Based upon the results of its investigation, the FAA believes that this proposal is cost beneficial.

This section contains a summary of the benefits and costs analyzed in the preliminary regulatory evaluation. In addition, it includes an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act, and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full preliminary regulatory evaluation contained in the docket.

Costs

The FAA has determined that the proposed establishment of an ARSA at Kalamazoo/Battle Creek International Airport would impose only a negligible cost of $500 (discounted, 1990 dollars) to the agency and no additional cost to the aviation community (namely, aircraft operators and fixed-based operators).

1. FAA Administrative Costs (Air Traffic Controller Staffing, Controller Training, and Facility Equipment)

As a result of the proposal, the FAA does not expect to incur any additional costs for air traffic controller staffing, controller training, or facility equipment. The FAA is confident that it can handle any additional traffic that would participate in radar services at ARSAs through more efficient use of personnel at current authorized staffing level.

The FAA expects to be able to train its controller force in ARSA procedures during regularly scheduled briefing sessions routinely held at the Kalamazoo/Battle Creek International Airport. Therefore, no additional training costs are expected. Because the Kalamazoo/Battle Creek International Airport currently provides Stage III service and already has a terminal radar system installed, it would not be necessary to procure additional equipment. For the ARSA program in general, modification of the computer software used to operate radar equipment may be necessary, though it has not been necessary to date. In some instances, previously adopted plans to replace or modify older existing equipment may be rescheduled to accommodate the ARSA program. However, no significant additional equipment requirements are anticipated. With the ARSA program, the FAA is essentially modifying its terminal radar procedures in a manner that would make more efficient use of existing resources.

2. Other FAA Administrative Costs (Revision of Charts, Notification of the Public, and Pilot Education)

Establishment of ARSAs throughout the country has made it necessary to revise sectional charts to remove existing airspace depictions and incorporate the new ARSA airspace boundaries. The current FAA practice is to revise these sectionals every 6 months. Changes of the type required to depict an ARSA are made routinely during charting cycles, and can be considered an ordinary cost of doing business. Therefore, the FAA does not expect to incur any additional charting costs as a result of the proposed ARSA. Pilots obtain charts depicting ARSAs as they are published during the charting cycles. Because pilots are already required to use current charts, they would not incur any additional costs as a result of the proposed ARSA.

The FAA will hold an informal public meeting at each location where an ARSA is proposed. These meetings provide pilots with the best opportunity to learn both how an ARSA works and how it would affect their local operations. The expenses associated with these public meetings will be incurred regardless of whether an ARSA is ultimately established. Thus, they are more appropriately considered as routine FAA costs. The proposed ARSA at the Kalamazoo/Battle Creek International Airport, however, is expected to impose a one-time public information cost of $500 (discounted, 1990 dollars). This cost is expected to be incurred primarily as the result of distributing a Letter to Airmen to all pilots residing within 50 miles of the ARSA site. This letter would explain the operation and airspace configuration of the ARSA. Another cost would be the issuing of an Advisory Circular on the proposed ARSA. The combined Letter to Airmen and prorated Advisory Circular costs would amount to approximately $500 (discounted, 1990 dollars). This one-time cost would be incurred upon the initial establishment of the proposed ARSA.

For the ARSA program in general, FAA district offices throughout the country have conducted aviation safety seminars. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, including ARSAs, and do not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-up user meetings that are held at each site following implementation of the ARSA. The FAA organizes these meetings to get feedback from users on local ARSA operations. The meetings are held at public or other facilities and are provided free of charge or at a nominal cost. Because local FAA facility personnel conduct these meetings, no travel, per diem, or overtime costs are incurred by regional or headquarters personnel.

3. Potential Operating Costs to the Aviation Community (Circumnavigation, Delays, and Radio Communications Equipment)

Potential Circumnavigation Costs. The FAA anticipates that some pilots who currently transit the terminal area without establishing radio communications or participating in Stage III services may choose to circumnavigate the proposed ARSA at Kalamazoo/Battle Creek International Airport. However, the FAA contends that these operators could circumnavigate the ARSA without significantly deviating from their regular flight path. They could also fly above the ceiling (4,900 feet mean sea level (MSL)) or under the floor (2,000 to 2,100 feet MSL) to remain clear of the proposed ARSA. Because of this relatively short distance, the FAA estimates that the proposed rule would have a minimal, if any, cost impact on general aviation (GA) operations.

Potential Costs of Delays. The FAA recognizes that the potential exists for delays to develop at the Kalamazoo/Battle Creek International Airport following the establishment of an ARSA there. The additional traffic that ATC would be handling as a result of the mandatory participation requirement could result in minor delays to aircraft operations. The FAA does not expect such delays to be significant. The flexibility afforded controllers in handling traffic as a result of the separation standards allowed in an ARSA would keep delay problems to a minimum. Those problems that do occur are typically transitional in nature. This has been the experience at the three locations where ARSAs have been in effect the longest and is the trend at most of the more recently designated ARSA locations. ATC facilities eventually gain the operating experience and knowledge to tailor procedures and allocate resources to take the fullest advantage of the efficiencies that ARSAs permit. A few ARSA sites have encountered some difficulties in making the transition to an ARSA, and the FAA is attempting to resolve these local problems. However, the FAA does not anticipate that any circumstances exist at the Kalamazoo/Battle Creek International Airport that would result in such problems. If the proposed ARSA is established, Kalamazoo/Battle Creek International Airport is expected to experience the smooth transition process that has characterized the majority of ARSA sites established to date.

Potential Costs of Communications Equipment. The FAA does not expect that any operators would find it necessary to install radio transceivers as a result of the proposed rule. Aircraft operating to and from the Kalamazoo/Battle Creek International Airport already are required to have two-way radio communications capability. This is due to the communications requirement of the existing airport traffic area and, therefore, aircraft operators are not expected to incur any additional costs as a result of the ARSA. Those GA aircraft operators without radios that transit the area can circumnavigate the proposed ARSA without significantly altering their course. In addition, procedural agreements between ATC and affected satellite airports could be used to avoid imposing radio installation costs on operators at these airports.

4. Other Potential Costs to the Aviation Community

Special situations might exist where establishment of the proposed ARSA could impose certain costs on users. Some of the users and activities that may be affected are local fixed-base operators and airport operators, flight training, crop dusting, soaring, ballooning, parachuting, and ultralight and banner towing operators. However, the FAA may employ exclusions, cutouts, and special procedures to alleviate any adverse impacts. The FAA may also develop special procedures to accommodate these activities through local agreements between ATC and the affected organizations. For these reasons, the FAA does not expect any such adverse impacts to occur as a result of the proposal.

5. Mode C and TCAS Rules

GA aircraft that enter or fly over the proposed ARSA would be subject to the "Transponder With Automatic Altitude Reporting Capability Requirement (Mode C Rule)" (53 FR 23356, June 21, 1988). Phase II of the Mode C Rule went into effect for ARSAs on December 30, 1990. It states that all aircraft must be equipped with an operable transponder with Mode C capability when operating in and above an ARSA. Specifically, the Mode C Rule affects all aircraft operating in an ARSA and in all airspace above an ARSA beginning at

the ceiling and extending upward to 10,000 feet MSL within the lateral confines of an ARSA. The requirement also applies to any ARSA designated in the future.

Some aircraft operators may have to acquire (or upgrade to) a Mode C transponder as a result of the ARSA. However, the cost of acquiring a Mode C transponder for all GA aircraft in the U.S. was accounted for in the Mode C Rule. The Mode C Rule assumed a worst-case scenario that all operators of GA aircraft without a transponder with Mode C will acquire such equipment. In the Mode C Rule, the FAA contended that GA operators will acquire Mode C transponders to avoid having to circumnavigate continually the increasing amount of airspace that requires Mode C transponders. Thus, any Mode C acquisition costs as a result of the proposed ARSA at the Kalamazoo/Battle Creek International Airport or any other ARSA have already been attributed entirely to the Mode C Rule.

The FAA has also adopted regulations requiring certain aircraft operators to install a traffic alert and collision avoidance system (TCAS) (54 FR 940, January 10, 1989). TCAS allows air carriers to determine the position of other aircraft from the signal emitted by Mode C transponders. TCAS will then issue resolution advisories as to what evasive actions are most appropriate to avoid a collision. The TCAS Rule would have no cost impact on the proposed ARSA, but it would contribute to the potential benefits. The potential benefits of the proposed ARSA are discussed below.

Benefits

The FAA has determined that the potential benefits of the proposed ARSA would be enhanced aviation safety (in terms of a lowered risk of midair collisions) and improved operational efficiency (in terms of higher air traffic controller productivity with existing resources). These potential benefits are difficult to quantify and express in monetary terms. Thus, such benefits have been analyzed to qualitative terms, as explained in the following sections.

The safety and efficiency benefits of the proposal are attributed to simplification and standardization of ARSA configurations and operating procedures which allow ATC greater flexibility in handling air traffic. ARSAs also enable ATC to move traffic, as efficiently as possible, with increased safety by reducing the risk of a midair collision.

The NAR Task Group found that airspace users, especially GA users, encountered significant problems with terminal radar services. Different levels of radar service offered within terminal areas caused confusion, and users were not always certain what restrictions and privileges existed. The standardization and simplification of the ARSA concept is expected to alleviate many of these problems. As both pilots and controllers become more familiar with ARSA operating procedures, all IFR and VFR traffic is expected to move as efficiently and expeditiously as it did under Stage III service. These benefits of the ARSA program cannot be specifically attributed to individual ARSAs, but rather will result from the overall improvements in terminal area ATC procedures as ARSAs are implemented throughout the country. Establishment of the proposed ARSA would contribute to these overall improvements.

In addition, the proposed ARSA would generate potential safety benefits in the form of a lowered risk of midair collisions due to increased positive control of airspace around Kalamazoo/Battle Creek International Airport. However, the potential safety benefits are difficult to quantify in monetary terms because of the proactive nature of the proposed ARSA. Based on symptoms that indicate an increased risk of a midair collision at Kalamazoo/Battle Creek International Airport, the FAA is establishing an ARSA there to prevent a safety problem from occurring. These early symptoms are the increased volume of passenger enplanements and the increased complexity of aircraft operations at the Kalamazoo/Battle Creek International Airport.

The volume of aircraft operations and the number of enplanements at Kalamazoo/Battle Creek International Airport have risen dramatically. Operations at Kalamazoo/Battle Creek International Airport in 1990 are estimated to be 98,000 and are projected to be 131,000 by the year 2000. It is this high level of operations that has made Kalamazoo/Battle Creek International Airport eligible to become an ARSA. Enplanements for 1990 are estimated to be 230,000 and are projected to be 354,000 by the year 2000.

The complexity of aircraft operations at Kalamazoo/Battle Creek International Airport has increased also. Complexity refers to air traffic conditions resulting from a mix of controlled and uncontrolled aircraft. As complexity increases, so does the potential for midair collision. There are some special characteristics at Kalamazoo/Battle Creek International Airport that have led to this increased complexity. They are:

- Western Michigan University generates a significant amount of student training traffic. The University provides not only basic flight training but also training for commercial, instrument, flight instructor, and multi-engine ratings.
- Kal-Aero, the only fixed-base operator at Kalamazoo/Battle Creek International Airport, operates a large maintenance facility servicing a large number of corporate jets, turbo-props, and light to medium twin-engine aircraft. This maintenance facility not only generates a large number of jet and turbo-prop traffic inbound for maintenance but also generates numerous requests for "unusual operations" in connection with maintenance flights.
- The Kalamazoo Aviation History Museum is based at Kalamazoo/Battle Creek International Airport. There are several flights each day featuring the museum's restored military aircraft. These unique aircraft range from antiques to high performance single-engine warbirds owned by the museum. The special operating characteristics of these aircraft require special operating procedures to sequence them in with the normal flow of traffic. The museum also attracts a number of itinerant aircraft with visitors to view its facilities.

The ARSA program has the potential for reducing the number of near midair collisions (NMAC). In a study of NMAC data, the FAA's Office of Aviation Safety (ASF) found that approximately 15 percent of reported NMACs occur in TRSA airspace. The ASF study found that about half of all NMACs occur in the 1,000 to 5,000 feet altitude range, which is closely comparable to the altitudes where pilot participation is mandatory in the ARSA. The study also found that over 85 percent of NMACs occur in VFR conditions when visibility is 5 miles or greater. Finally, the study found that the largest number of NMAC reports is associated with IFR operators under radar control conflicting with VFR traffic during VFR flight conditions below 12,500 feet. The mandatory participation requirements of the ARSA and the radar services provided by ATC to VFR as well as IFR pilots would help alleviate such conflicts where they are now occurring in TRSA and other non-ARSA airspace.

The NAR Task Group study conducted by Engineering & Economics Research reviewed NMAC data for Austin and Columbus during the 1978 to 1984 period. They found that the presence of ARSAs would have reduced the probability of NMAC occurrence by 38 percent of the reported incidents at

Austin, and 33 percent at Columbus. A study of the ARSA confirmation sites conducted by the FAA's Office of Aviation Policy and Plans (APO) estimated that the potential for NMACs could be reduced by about 44 percent. Although no quantifiable benefits can be attributed to a reduction in NMACs, near midair and actual midair collisions result from similar causal factors. A reduction in NMACs suggests that the risk of midair collisions would also be reduced as a result of the ARSA program.

The APO study also included a detailed analysis to determine if a reduction in midair collision risk might result from replacing a TRSA with an ARSA. The collision risk analysis was based upon the experience at Columbus because recorded radar data through Automated Radar Terminal System (ARTS) III–A extraction was available only at Columbus. The APO study focused on conditions of fairly heavy VFR activity since the ARSA affects procedures used to handle VFR traffic in the terminal radar area. Because the replacement of a TRSA with an ARSA might alter the routes of travel, particularly for aircraft that did not previously participate in the TRSA, the analysis examined the intersections of flight paths before and after the ARSA was installed. The flight path analysis focused on the areas immediately around, under, and over the ARSA, and determined that there was no compression of traffic in this airspace following installation of the ARSA. In the absence of compression, the study concluded that the mandatory participation requirement for all aircraft operating within the ARSA resulted in a 75 percent reduction in midair collision risk.

The FAA has reviewed NTSB midair collision accident records for the period between January 1978 and October 1984. This review indicated that the establishment of ARSAs in place of TRSAs could greatly reduce the risk of one to two midair collisions per year. Because the circumstances observed at the Columbus test site may not be the same at other TRSA locations, the 75 percent reduction in midair collision risks measured at Columbus may not be achieved at other ARSA sites. Therefore, the FAA conservatively estimates that the ARSA program reduces the risk of a midair collision by only 50 percent at TRSA locations that are replaced with ARSAs. Establishing ARSAs at high density airports currently providing Stage III radar service also contribute to a reduction in midair collision risk.

A 50 percent reduction of midair collision risk would result in one prevented midair collision nationally every 1 to 2 years. The quantifiable benefits of preventing a midair collision can range from less than $150,000, by preventing a minor nonfatal accident between GA aircraft, to more than $250 million, by preventing a midair collision involving a passenger jet airplane. Establishment of the proposed ARSA would contribute to this improvement in aviation safety.

Ordinarily, the benefit of an incremental reduction in the risk of midair collisions from establishing an ARSA would be attributed entirely to the ARSA program. However, an indeterminant amount of the benefits have to be credited to the interaction of the proposed ARSA at Kalamazoo/Battle Creek International Airport (and the ARSA program in general) with the Mode C Rule, which in turn interacts with the TCAS Rule. This is because the benefits of the proposed ARSA at Kalamazoo/Battle Creek International Airport, as well as other designated airspace actions that require Mode C transponders, cannot be separated from the benefits of the Mode C and TCAS Rules. Thus, the ARSA and TCA programs and the Mode C and TCAS Rules would share potential benefits totaling $2.1 billion.

Comparison of Costs and Benefits

The FAA has determined that the proposed ARSA at the Kalamazoo/Battle Creek International Airport would impose a negligible administrative cost of $500 on the agency. If this cost estimate of $500 were added to the total cost of the ARSA and TCA programs and the Mode C and TCAS Rules, the combined cost would still be less than the total potential safety benefits. The proposal would also generate some benefits in the form of enhanced operational efficiency. In addition, the proposal would not impose any additional cost to the aviation community. Thus, the FAA believes that the proposal would be cost-beneficial.

International Trade Impact Assessment

The proposal would only affect U.S. terminal airspace operating procedures at and in the vicinity of Kalamazoo, MI. This proposal would not impose a competitive trade advantage or disadvantage to foreign firms on the sale of either foreign aviation products or services in the United States. In addition, domestic firms would not incur a competitive trade advantage or disadvantage on either the sale of United States aviation products or services in foreign countries.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

Under FAA Order 2100.14A entitled Regulatory Flexibility Criteria and Guidance, a significant economic impact means annualized net compliance cost to an entity, which when adjusted for inflation, is greater than or equal to the threshold cost level for that entity. A substantial number of small entities means a number that is not fewer than eleven and represents more than one-third of the small entities subject to a proposed or existing rule.

For the purpose of this evaluation, the small entities that would be potentially affected by the proposed ARSA are defined as fixed-base operators, flight schools, agricultural operators, and other small aviation businesses located at satellite airports located within 5 nautical miles of a potential ARSA center.

Participation in the TRSA and radio communication with ATC, are currently voluntary. As the result, participation in the proposed ARSA would be mandatory and businesses at airports located within the 5-nautical-mile core might be altered or lose customers to airports outside of the 5-nautical-mile ARSA core. The FAA has endeavored to exclude almost every satellite airport located within the 5-nautical-mile ring to avoid adversely impacting their operations, and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes were achieved through Letters of Agreement between ATC and the affected airports by establishing special procedures for aircraft operators. In this manner, the FAA expects to eliminate virtually any adverse impact on the operations of small satellite airports that could result from the ARSA program. Similarly, the FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, and ultralight and banner towing activities. This would be accomplished by developing special procedures that would accommodate these activities

through local agreements between ATC facilities and the affected organizations. The FAA has utilized such arrangements extensively in the past to establish ARSAs.

The FAA expects that any delay problems that may initially develop following implementation of an ARSA would be transitory. Furthermore, airports that would be affected by the ARSA program represent only a small proportion of all the public-use airports affected by the proposed ARSA. Thus, small entities of any type that use aircraft in the course of their business would not be adversely impacted.

For these reasons, it is certified that the proposal would not result in a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required under the terms of the RFA.

Federalism Implications

This proposed regulation will not have a substantial direct effect 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, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

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

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 98–449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

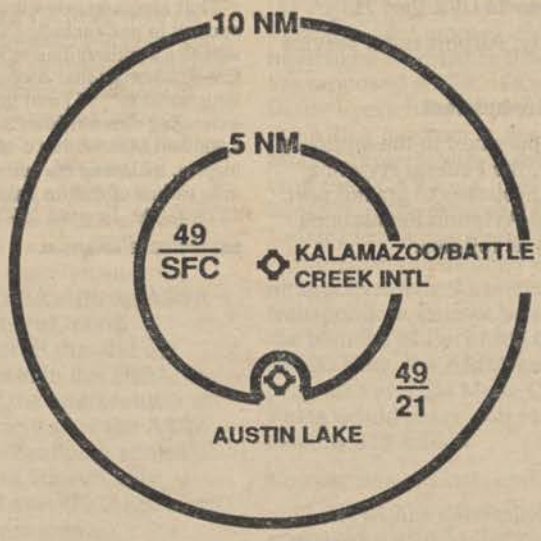
Kalamazoo/Battle Creek International Airport, MI [New]

That airspace extending upward from the surface to and including 4,900 feet MSL within a 5-mile radius of Kalamazoo/Battle Creek International Airport (lat. 42°14'04" N., long. 85°33'07" W.) and that airspace extending upward from 2,100 feet MSL to 4,900 feet MSL within a 10-mile radius of the airport, including that airspace within a 1-mile radius of Austin Lake Airport (lat. 42°09'45" N., long. 85°32'45" W.).

BILLING CODE 4910-13-M

KALAMAZOO, MI
AIRPORT RADAR SERVICE AREA
FIELD ELEVATION - 874 FEET

(NOT TO BE USED FOR NAVIGATION)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
ATP-220

BILLING CODE 4910-13-C

Issued in Washington, DC, on October 15, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-25544 Filed 10-22-91; 8:45 am]

BILLING CODE 4910-13-M

federal register

Wednesday
October 23, 1991

Part VII

Department of Transporation

Federal Aviation Administration

14 CFR Part 71

Establishment of the Manchester Airport Radar Service; NH; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AWA-16]

Establishment of the Manchester Airport Airport Radar Service Area; NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes an Airport Radar Service Area (ARSA) at Manchester Airport, NH. Manchester Airport is a public airport with an operating control tower serviced by a Level III terminal radar approach control facility (TRACON). Establishment of this ARSA requires that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at the affected location promotes the efficient control of air traffic and reduces the risk of midair collision in terminal areas.

EFFECTIVE DATE: 0901 UTC, December 12, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations to establish an ARSA at Manchester Airport, NH (56 FR 32136). Interested parties were invited to participate in this rulemaking process by submitting comments on the proposal to the FAA. Two written comments were received from the Air Transport Association of America (ATA) and the Air Line Pilots Association (ALPA). Section 71.501 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

Discussion of Comments

ATA and ALPA submitted comments in support of this proposal. ATA stated that the protection of ATC separation should be provided to all air carrier aircraft operating in the terminal environment where reliance on see-and-avoid procedures is impractical due to the increasing complexity of terminal arrival and aircraft operating procedures. In addition, the equipment and communications requirements for flight in the ARSA airspace would enhance the level of safety. ALPA concurred that establishing an ARSA would improve the safety of all aircraft operations at Manchester Airport.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes an ARSA at Manchester Airport, NH. This location is a public airport with an operating control tower served by a Level III TRACON. Operations in this ARSA require that pilots establish and maintain two-way radio communication with ATC while in the ARSA airspace.

Regulatory Evaluation Summary

This section summarizes the regulatory evaluation prepared by the FAA. The regulatory evaluation provides more detailed information on estimates of the potential economic consequences of this rule. This summary and the evaluation quantify, to the extent practicable, estimated costs of the rule to the private sector, consumers, and Federal, State, and local governments, and also the anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to have an annual effect on the economy of $100 million or more, result in a major increase in consumer costs, or have a significant adverse effect on competition, or one that is highly controversial.

The FAA has determined that this rule is not "major" as defined in the executive order. Therefore, a full regulatory impact analysis, which includes the identification and evaluation of cost-reducing alternatives to the rule has not been prepared. Instead, the agency has prepared a more concise document termed a "regulatory evaluation," which analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354) and an international trade impact assessment. For more detailed economic information than this summary contains, the reader should consult the regulatory evaluation contained in the docket.

Costs

The FAA has determined that establishing the Manchester ARSA will impose a one-time FAA administrative cost of $500 (discounted, 1990 dollars). For the aviation community (namely, aircraft operators and fixed based operators), the final rule will impose only negligible additional costs. The potential costs of the Manchester ARSA are discussed below.

1. Potential FAA Administrative Costs (air traffic controller staffing, controller training, and facility equipment costs).

For the Manchester ARSA (and the ARSA program in general), the FAA does not expect to incur any additional costs for ATC staffing, training, or facility equipment. The FAA is confident that it can handle any additional traffic that will participate in radar services at the ARSA through efficient use of personnel at the current authorized staffing level.

The FAA expects to be able to train its controller force at Manchester in ARSA procedures during regularly scheduled briefing sessions. Thus, no additional training costs are expected. Minor modifications of the computer software used to operate radar equipment may be necessary. Previously adopted plans to replace or modify older existing equipment may be rescheduled to accommodate the ARSA program. However, no significant additional equipment requirements are anticipated.

2. Other Potential FAA Administrative Costs (revision of charts, notification of the public, and pilot education).

When ARSAs are established, it is necessary to revise sectional charts to remove existing airspace depictions and incorporate the new ARSA airspace boundaries. The FAA currently revises these sectionals every six months. Changes of the type required to depict an ARSA are made routinely during charting cycles, and can be considered an ordinary operating cost. Therefore, the FAA does not expect to incur any additional charting costs as a result of the Manchester ARSA. Pilots will not incur any additional costs obtaining current sectionals depicting ARSAs, because they are already required to use the most current versions.

The FAA holds an informal public meeting at each proposed ARSA location. These meetings provide pilots with the best opportunity to learn both how an ARSA works and how it will

affect local operations. The expenses associated with these public meetings are incurred regardless of whether an ARSA is ultimately established. Thus, they are more appropriately considered routine FAA costs. However, any subsequent public information costs will be strictly attributed to the final rule. For instance, the FAA will distribute a Letter to Airmen to all pilots residing within 50 miles of the Manchester ARSA and issue an Advisory Circular that will explain the operation and airspace configuration of the ARSA. The combined Letter to Airmen and Advisory Circular will cost approximately $500 (discounted). This one-time cost will be incurred upon the initial establishment of the ARSA.

FAA district offices throughout the country conduct aviation safety seminars on a regular basis. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, including ARSAs, and do not involve additional costs. Also, no significant costs are expected to be incurred as a result of the follow-up user meetings that will be held following implementation of the ARSA. The FAA customarily organizes these meetings to get reactions from users on local ARSA operations. The meetings are held at public or other facilities and are provided free of charge or at a nominal cost. Because local FAA facility personnel conduct these meetings, no travel, per diem, or overtime costs are incurred by regional or headquarters personnel.

3. Potential Costs to the Aviation Community (circumnavigation, delays, and radio communications equipment).

The FAA anticipates that some pilots who currently transit the terminal area without establishing radio communications or participating in Stage II services may choose to circumnavigate the Manchester ARSA. However, the FAA contends that these operators could circumnavigate the ARSA without significantly deviating from their regular flight path. They could also remain clear of the ARSA by flying above the ceiling (4,300 feet mean sea level (MSL)) or under the various floors (which range from 1,500 to 2,500 feet MSL). Pilots who overfly the Manchester very high frequency omnidirectional radio range, which will lie within the ARSA, will either fly over the ARSA above 4,300 feet MSL or contact Manchester Approach Control for permission to transit the ARSA. The small deviations that might result from the establishment of the Manchester ARSA will have a negligible cost impact on nonparticipating general aviation (GA) aircraft operators who choose to circumnavigate the ARSA.

The FAA recognizes that delays might develop at Manchester following the initial establishment of the ARSA. The additional traffic that ATC will handle due to the mandatory pilot participation requirement could result in minor delays to aircraft operations. However, those potential delay problems are typically transitional in nature. The FAA contends that any potential delay problems will be more than offset by the increased flexibility afforded controllers in handling traffic as a result of ARSA separation standards. This has been the experience at the older ARSAs and at the newer ones. The FAA expects a smooth transition process at the Manchester ARSA as well.

The FAA assumes that aircraft operating in the vicinity of Manchester already have two-way radio communications capability and, therefore, are not expected to incur any additional costs as a result of the ARSA. Both Manchester and Boire Field (in Nashua, NH), which is located within the lateral boundaries of the ARSA, have control towers and already require two-way radio communications for aircraft taking off or landing at those airports when the tower is operating.

4. Mode C and Traffic Alert and Collision Avoidance System (TCAS) Rules.

The Manchester ARSA will be subject to Phase II of the Mode C Rule (14 CFR 91.215), which went into effect for ARSAs on December 30, 1990. The Mode C Rule states that all aircraft must be equipped with an operable transponder with altitude encoding capability when operating in and above an ARSA. Specifically, the Mode C Rule affects all aircraft operating in an ARSA and in all airspace above an ARSA beginning at the ceiling and extending upward to 10,000 feet MSL within the lateral confines of an ARSA.

Some aircraft operators may have to acquire or upgrade to a Mode C transponder as a result of the ARSA. However, the cost of acquiring a Mode C transponder for all GA aircraft in the U.S. was accounted for by the Mode C Rule. In promulgating the Mode C Rule, the FAA assumed a worst-case scenario that all operators of GA aircraft without a Mode C transponder will acquire such equipment. This assumption derived from the belief that GA operators will acquire Mode C transponders to avoid having to circumnavigate the increasing amount of airspace that requires Mode C transponders. Thus, any Mode C acquisition costs, as a result of the Manchester ARSA or any other ARSA, have already been attributed entirely to the Mode C Rule.

The FAA has also adopted regulations requiring certain aircraft operators to install a TCAS, which allows air carriers to determine the position of other aircraft from the signal emitted by Mode C transponders. TCAS issues conflict resolution advisories as to what evasive actions are most appropriate for avoiding potential midair collisions. The TCAS Rule will not contribute to the potential costs of the ARSA, but it will contribute to the potential safety benefits which are discussed below.

Benefits

The potential benefits of the Manchester ARSA will be enhanced aviation safety (in terms of a lowered risk of midair collisions) and improved operational efficiency (in terms of higher air traffic controller productivity with existing resources). These potential benefits are difficult to quantify in monetary terms. Therefore, such benefits have been analyzed in qualitative terms, as explained in the following sections.

The National Airspace Review (NAR) Task Group (1982) found that airspace users, especially GA users, encountered significant problems with terminal radar services. Different levels of radar service offered within terminal areas caused confusion, and users were not always certain of what restrictions and privileges existed. The standardization and simplification of operating procedures provided by ARSAs are expected to alleviate many of these problems. As both pilots and controllers become more familiar with ARSA operating procedures, all instrument flight rules (IFR) and visual flight rules (VFR) traffic is expected to move as efficiently and expeditiously as it did under Stage III service. These benefits of the ARSA program cannot be specifically attributed to individual ARSAs, but rather will result from the overall improvements realized in terminal area ATC procedures as ARSAs are implemented throughout the country. Establishment of the Manchester ARSA will contribute to these overall improvements.

The ARSA will generate potential safety benefits in the form of reducing the risk of midair collisions due to increased positive control of airspace around Manchester. Because of the proactive nature of the rule, the potential safety benefits are difficult to quantify in monetary terms. Perceiving an increased risk of a midair collision at Manchester, the FAA is establishing an ARSA there to prevent such an accident.

Indications of this increased risk are the increased volume of passenger enplanements and the increased complexity of aircraft operations at Manchester.

The volume of passenger enplanements at Manchester has risen dramatically. Enplanements at Manchester for 1990 were estimated to be 330,000, up from 58,000 in 1980, and are projected to be 660,000 by the year 2000. As a major reliever airport for Logan International Airport in Boston, MA, the number of aircraft operations has also increased. Operations at Manchester in 1990 were estimated to be 150,000 and are projected to be 185,000 by the year 2000. These high volumes of passenger enplanements and aircraft operations have brought Manchester within the ARSA criteria.

An ARSA has the potential for reducing the risk of midair collisions by reducing the number of near-midair collisions (NMACs). In a study of NMAC data, the FAA's Office of Aviation Safety (ASF) found that approximately 15 percent of reported NMACs occur in terminal radar service area (TRSA) airspace. This study found that about half of all NMACs occur in the 1,000 to 5,000 feet altitude range, which is similar to the airspace included in an ARSA. This study also found that over 85 percent of NMACs occur in VFR conditions when visibility is five miles or greater. The study further found that the largest number of NMAC reports are associated with IFR operators under radar control conflicting with VFR traffic during VFR flight conditions below 12,500 feet. The mandatory participation requirements of the ARSA and the radar services provided by ATC to VFR as well as IFR pilots will help alleviate such conflicts.

A NAR Task Group study conducted by Engineering & Economics Research, Inc. reviewed NMAC data for Austin, TX, and Columbus, OH, during the 1978 to 1984 period. This study found that the presence of an ARSA reduced the probability of NMAC occurrence by 38 percent at Austin and 33 percent at Columbus. Another study, conducted by the FAA's Office of Policy and Plans (APO) in 1984, estimated that the potential for NMACs could be reduced by about 44 percent through establishing an ARSA. Since near midair and actual midair collisions result from similar causal factors, a reduction in near midair collisions as a result of the ARSA program suggests that the risk of actual midair collisions would also be reduced.

APO's 1984 study of the ARSA confirmation sites included a detailed analysis to determine if a reduction in midair collision risk might result from replacing a TRSA with an ARSA. The collision risk analysis was based upon the experience at Columbus, because recorded radar data through Automated Radar Terminal System ARTS III–A extraction was available there. The study focused on conditions of fairly heavy VFR activity in the terminal radar area since the ARSA affects procedures used to handle VFR traffic. The analysis examined the intersections of flight paths before and after the ARSA was installed because the replacement of a TRSA with an ARSA might alter the routes of travel. Route alternatives were expected particularly for aircraft that did not previously participate in the TRSA. The flight path analysis focused on the areas immediately around, under, and over the ARSA, and determined that there was no compression of traffic in this airspace following installation of the ARSA. In the absence of compression, the study concluded that the mandatory participation requirement for all aircraft operating within the ARSA resulted in a 75 percent reduction in midair collision risk.

The FAA reviewed National Transportation Safety Board (NTSB) midair collision accident records for the period between January 1978 and October 1984. This review also indicated that the establishment of an ARSA, in place of a TRSA, could greatly reduce the risk of midair collisions. Because the circumstances observed at the Columbus test site may not be the same at other TRSA locations, the 75 percent reduction in midair collision risk measured there may not be achieved at other ARSA sites. Therefore, the FAA conservatively estimates that the implementation of the ARSA program will generally reduce the risk of midair collision by 50 percent at TRSA locations. Establishing ARSAs at congested airports currently providing Stage II radar service will also contribute to a reduction in midair collision risk.

A 50 percent reduction of midair collision risks would result in one prevented midair collision nationally every one to two years. The quantifiable benefits of preventing a midair collision can range from less than $150,000 by preventing a minor non-fatal accident between GA aircraft, to $250 million or more by preventing a midair collision involving a commercial passenger jet airplane. Establishment of the Manchester ARSA will contribute to this improvement in aviation safety.

Ordinarily, the benefit of a reduction in the risk of midair collisions from establishing an ARSA would be attributed entirely to the ARSA program. However, an indeterminate amount of the benefits has to be attributed to the interaction of the Manchester ARSA (and the ARSA program in general) with the Mode C Rule, which in turn interacts with the TCAS Rule. This is because the benefits of the Manchester ARSA, as well as other designated airspace actions that require Mode C transponders, cannot be separated from the benefits of the Mode C and TCAS Rules. The terminal control area (TCA) and ARSA programs (including the Manchester ARSA), plus the Mode C and TCAS Rules, share potential national benefits totaling $2.1 billion.

Comparison of Costs and Benefits

The FAA has determined that the final rule to establish an ARSA at Manchester will impose a negligible cost of $500 on the agency. When this cost estimate of $500 is added to the total cost of the TCA and ARSA programs and the Mode C Rule and TCAS Rule, the costs will still be less than the total potential safety benefits. The final rule will generate additional benefits in the form of enhanced operational efficiency for ATC, while imposing no additional costs to the aviation community. Thus, the FAA believes that the rule is cost-beneficial.

International Trade Impact Assessment

The final rule will only affect U.S. terminal airspace operating procedures at and in the vicinity of Manchester, NH. In addition, it will not impose a competitive trade advantage or disadvantage on foreign firms in the sale of foreign aviation products or services in the United States. Likewise, domestic firms will not incur a competitive trade advantage or disadvantage in either the sale of United States aviation products or services in foreign countries.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

Under FAA order 2100.14A entitled Regulatory Flexibility Criteria and Guidance, a significant economic impact means annualized net compliance cost to an entity, which when adjusted for inflation, is greater than or equal to the

threshold cost level for that entity. A substantial number of small entities means a number that is not fewer than eleven and is more than one-third the number of the small entities subject to a proposed or existing rule.

For the purposes of this evaluation, the small entities that will be potentially affected by the final rule are defined as fixed base operators, flight schools, and other small aviation businesses located at Manchester. The mandatory participation in the ARSA along with unique conditions around Manchester could potentially impose certain costs on users. Some of the users and activities that may be affected are local fixed-base operators and flight training operations at Manchester and Nashua. However, the airport traffic areas at Manchester and Nashua already require participation for those users. The ARSA would affect only a small amount of additional airspace. For example, it would only affect that airspace above and around the two airport traffic areas. The FAA believes that there will be no adverse impacts as a result of the Manchester ARSA.

The FAA expects that any delay problems that may initially develop following implementation of an ARSA would be transitory. Thus, small entities of any type that use aircraft in the course of their business will not be adversely impacted over a long period of time.

The FAA has determined that the final rule would not result in a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required by the RFA.

Federalism Implications

The regulation adopted will not have a substantial direct effect 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, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is also certified that this rule does not require preparation of a Regulatory Flexibility Analysis under the RFA.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

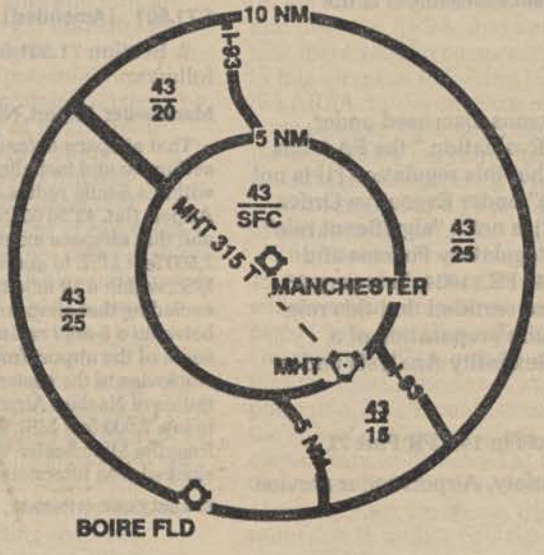
Manchester Airport, NH [New]

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of the Manchester Airport (lat. 42°56'00"N., long. 71°26'18"W.); and that airspace extending upward from 2,500 feet MSL to and including 4,300 feet MSL within a 10-mile radius of the airport, excluding that airspace below 1,500 feet MSL between a 5-mile radius and 10-mile radius south of the airport from Interstate 93 clockwise to the eastern edge of the 5-mile radius of Nashua Airport and that airspace below 2,000 feet MSL north of the airport from the Manchester VORTAC 315° radial clockwise to Interstate 93.

BILLING CODE 4910-13-M

MANCHESTER, NH
AIRPORT RADAR SERVICE AREA
FIELD ELEVATION - 234 FEET

(NOT TO BE USED FOR NAVIGATION)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
ATP-220

BILLING CODE 4910-13-C

Issued in Washington, DC, on October 15, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-25479 Filed 10-22-91; 8:45 am]

BILLING CODE 4910-13-M

MANCHESTER, NH

AIRPORT RADAR SERVICE AREA

FIELD ELEVATION - 234 FEET

federal register

Wednesday
October 23, 1991

Part VIII

Department of Energy

10 CFR Part 1004
Freedom of Information; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 1004

Freedom of Information

AGENCY: Department of Energy (DOE).

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the DOE regulations on the procedures and principles to be applied in responding to requests for records under the Freedom of Information Act (FOIA) 5 U.S.C. 552. Revisions include current names and addresses of organizational entities, and current guidelines for the schedule of fees associated with processing requests. A section on policies was added to clarify DOE's operation of a first-in, first-out policy in responding to FOIA requests. The issue of when contractor records become agency records is also resolved in the new rule. The role of the Office of Hearings and Appeals is clarified.

DATES: Comments must be received by November 22, 1991.

ADDRESSES: Written comments should be sent to P.J. Paradis, Chief of Freedom of Information and Privacy Acts, AD–234.1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6025.

FOR FURTHER INFORMATION CONTACT: P.J. Paradis, Chief of Freedom of Information and Privacy Acts, AD–234.1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6025.

Abel Lopez, Office of General Counsel, GC–43, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8618.

SUPPLEMENTARY INFORMATION: This proposed rule conforms to the guidelines which the Office of Management and Budget issued, see 52 FR 10011 (March 27, 1987), as directed by the FOIA reform legislation, Public Law 99–570, section 1803, signed on October 27, 1986. Additionally, there are many editorial revisions and changes to the existing DOE rule on FOIA which are reflected in this proposed rule.

General Information

The Freedom of Information Reform Act of 1986, Public Law No. 99–570, 100 Stat. 3207–49, requires that each agency promulgate regulations to establish procedures and guidelines to process requests received under the FOIA. The proposed DOE rule amends the Department's FOIA policies to clarify the role of the Office of Hearings and Appeals and the Department's first-in, first-out policy of processing FOIA requests. In addition to these changes, the proposed rule reflects current organizational changes. The proposed rule revises existing DOE fees schedules and procedures in accordance with the Reform Act and makes other technical and editorial changes to the DOE regulations that implement the FOIA.

Procedural Information

Pursuant to section 501(c) of the Department of Energy Organization Act (DOEOA), the Secretary of Energy has determined that no substantial issue of fact or law exists and that this rule will not have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Accordingly, the Department of Energy is not bound by the prior notice and hearings requirements of section 501(b), (c) and (d) of the DOEOA, and may promulgate this rule in accordance with section 553 of title 5, United States Code.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), requires Federal agencies to prepare detailed statements on major Federal actions significantly affecting the quality of the human environment. The DOE has determined that the regulations clearly do not significantly affect the quality of the human environment; therefore, the preparation of an Environmental Impact Statement is not required.

Executive Order No. 12291

It has been determined that these regulations are not a major rule subject to the requirements of Executive Order No. 12291 (46 FR 13193, February 19, 1981), because they are not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions, or cause significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These regulations were submitted to the Director of the Office of Management and Budget for a 10 day review period as required by section 3(c)(3) of Executive Order No. 12291. The Director has concluded his review under that Executive Order.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the DOE certifies that sections 603 and 604 of the Act do not apply to these regulations because their promulgation will not have a significant economic impact on a substantial number of small entities, since regulations merely provide for revisions to the existing regulations that conform to the amendments to the FOIA that were enacted and technical changes to the regulations.

List of Subjects in 10 CFR Part 1004

Freedom of information.

For the reasons set out in the preamble, chapter X of title 10, part 1004, the Code of Federal Regulations is proposed to be revised as set forth below.

Issued in Washington, DC on October 11, 1991.

John J. Nettles,

Director, Office of Administration and Human Resource Management.

10 CFR part 1004 is revised to read as follows:

PART 1004—FREEDOM OF INFORMATION

Sec.

Authority: 5 U.S.C. 552.

§ 1004.1 Purpose and scope.

This part contains the regulations of the Department of Energy (DOE) that implement 5 U.S.C. 552, Public Law 89–487, as amended by Public Law 93–502, 88 Stat. 1561, by Public Law 94–409, 90 Stat. 1241, and by Public Law 99–570, 100 Stat. 3207–49. The regulations of this part provide information concerning the procedures by which records may be requested from all DOE offices, excluding the Federal Energy Regulatory Commission (FERC). Records of the DOE made available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public as prescribed by this part. Persons seeking records of the DOE may find it helpful to consult with DOE Freedom of

Information Officer before invoking the formal procedures set out below.

§ 1004.2 Definitions.

As used in this part:

(a) *Commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, agencies must determine how the requester will use the documents requested. Moreover, where DOE has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not evident from the request itself, the DOE will seek additional clarification before assigning the request to a specific category.

(b) *Denying Official* means the Freedom of Information Officer or that DOE officer having custody of or responsibility for records and the authority to deny the release of those records requested under 5 U.S.C. 552. In DOE Headquarters, the term refers to The Freedom of Information Officer as defined below and officials who report directly to either the Office of the Secretary or a Secretarial Officer, as also defined below. In the field, the term refers to the head of the field locations identified in § 1004.2(g) and the heads of those offices to which the field office provides administrative support and have delegated this authority.

(c) *Department* or *Department of Energy (DOE)* means all organizational entities which are a part of the executive department created by title II of the DOE Organization Act, Public Law 95–91. This specifically excludes the FERC.

(d) *Direct costs* means those expenditures which the DOE actually incurs in searching for a duplicating (and in the case of commercial requesters, reviewing) documents in response to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of hourly pay for the employee plus 16 percent of that rate as specified by OMB 52 FR 10012, March 27, 1987) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(e) *Duplication* refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of, but are not limited to, paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk). The copy must be in a form that reasonably can be by requesters.

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

(g) *Freedom of Information Officer* means the person designated to administer the Freedom of Information Act at the following DOE offices:

(1) Alaska Power Administration, P.O. Box 020050, Juneau, AK 99802–0050.

(2) Bartlesville Project Office, P.O. Box 1398, Bartlesville, OK 74005.

(3) Bonneville Power Administration, P.O. Box 3621–A, Portland, OR 97208–3621.

(4) DOE Field Office, Albuquerque, P.O. Box 5400, Albuquerque, NM 87155–5400.

(5) DOE Field Office, Chicago, 9800 South Cass Avenue, Argonne, IL 60439.

(6) DOE Field Office, Idaho, 785 DOE Place, Idaho Falls, ID 83402.

(7) DOE Field Office, Nevada, P.O. Box 98518, Las Vegas, NV 89193–8518.

(8) DOE Field Office, Oak Ridge, P.O. Box 2001, Oak Ridge, TN 37831.

(9) DOE Field Office, Richland, P.O. Box 550, Richland, WA 99352.

(10) DOE Field Office, Rocky Flats, P.O. Box 928, Golden, CO 80402–0928.

(11) DOE Field Office, San Francisco, 1333 Broadway, Oakland, CA 94612.

(12) DOE Field Office, Savannah River, P.O. Box A, Aiken, SC 29802.

(13) Headquarters, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

(14) Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507.

(15) Pittsburgh Energy Technology Center, P.O. Box 10940, Pittsburgh, PA 15236–0940.

(16) Pittsburgh Naval Reactors Office, P.O. Box 109, West Mifflin, PA 15122–0109.

(17) Schenectady Naval Reactors Office, P.O. Box 1069, Schenectady, NY 12301–1069.

(18) Southeastern Power Administration, Samuel Elbert Building, Elberton, GA 30635.

(19) Southwestern Power Administration, ATTN: SWPA–120, P.O. Box 1619, Tulsa, OK 74101.

(20) Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

(21) Superconducting Super Collider Project Office, 2550 Beckley Meade Avenue, Dallas, TX 75237–3946.

(22) Western Area Power Administration, P.O. Box 3402, Golden, CO 80401.

(h) *General Counsel* means the General Counsel provided for in section 202(b) of the DOE Organization Act, or any DOE attorney designated by the General Counsel as having responsibility for advising the Department of Freedom of Information Act matters.

(i) *Headquarters* means all DOE facilities functioning within the Washington, DC metropolitan area.

(j) *Information of technical data having commercial value* means any information or technical data which is generated and possessed by a contractor but owned by the Government and which is determined by DOE to be useful in or developed under a DOE approved technology transfer activity, the disclosure of which would cause harm to its commercial application in some product or process, and is either (1) licensed commercially or expected to be commercialized within a reasonable period of time, or (2) identified as withholdable for a period of time prescribed by DOE approved agreement. Ownership of information or technical data is determined pursuant to contract.

(k) *Non-commercial scientific institution* refers to an institution that is not operated on a "commercial" basis as that term is referenced in § 1004.2(c), and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(l) *Office* means any administrative or operating unit of the DOE, including those in field offices.

(m) *Records* means books, papers, maps, photograph, machine-readable materials, or other documentary materials regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transition of public business and preserved, or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informative value of the data in them.

(n) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news

to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase of subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the DOE may also look to the past publication record of a requester in making this determination.

(o) *Review* refers to the process of examining documents located in response to a request (see § 1004.2(a)) to determine whether any portion of any document located is exempt from disclosure. This includes the application of existing classification and control guidance to a requested record. It also includes processing any documents for disclosure, e.g., doing all that is necessary to delete information and otherwise prepare the documents for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(p) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The DOE will search for material in the most efficient and least expensive manner in order to minimize costs for both DOE and the requester. For example, DOE will not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" will be distinguished, moreover, from "review" of material which determines whether the material is exempt from disclosure. Searches may be done manually or by computer using existing programming.

(q) *Secretarial Officer* means the following positions or their successors: The General Counsel; Director of Administration and Human Resource Management; Assistant Secretary for Congressional and Intergovernmental Affairs; Director of Public Affairs; Assistant Secretary for International Affairs and Energy Emergencies; Assistant Secretary for Nuclear Energy; Assistant Secretary for Fossil Energy; Assistant Secretary, Conservation and Renewable Energy; Assistant Secretary for Defense Programs, Assistant Secretary for Environment, Safety, and Health; Administrator, Economic Regulatory Administration; Administrator, Energy Information Administration; Director of Energy Research; Director of Civilian Radioactive Waste Management; Director of Minority Economic Impact; the Inspector General; Director of Small and Disadvantaged Business Utilization; Chairman, Board of Contract Appeals; Chief Financial Officer; Director of Environmental Restoration and Waste Management; Director of Hearings and Appeals; Director of Intelligence; Director of New Production Reactors; Director of Nuclear Safety; Deputy Under Secretary of Policy, Planning & Analysis; Director of Procurement, Assistance and Program Management; Director of Security Affairs.

(r) *Statute specifically providing for setting the level of fees for particular types of records*, at 5 U.S.C. 552(a)(4)(A)(vi), means any statute that specifically requires a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set the level of fees for particular types of records, in order to:

(1) Serve both the general public and private sector organizations by making government records conveniently available;

(2) Ensure that groups and individuals pay the cost of publications and other services which are for their special use so that these costs are not borne by the general public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

§ 1004.3 Policies.

(a) It is the policy of the DOE to make information publicly available to the fullest extent possible. Officers and employees of the DOE may furnish to the public, informally and without compliance with procedures in this regulation, records of the type which officers and employees of the DOE customarily furnish to the public in the regular performance of their duties.

(b) Records will be made available to the public unless they are exempt from mandatory public disclosure pursuant to one or more of the exemption provisions of the FOIA or other applicable statutes.

(c) To the extent permitted by other laws, the DOE will make available records which it is authorized to withhold under the FOIA whenever it is determined that such disclosure is in the public interest.

(d) Where a contract with the DOE stipulates that any records relating to work under the contract shall be the property of the Government, such records shall be considered to be agency records and subject to disclosure under the FOIA, except for records that contain information or technical data having commercial value as defined in § 1004.2(j). However, if the contract does not make such specific provisions, no DOE contractor records shall be considered to be agency records unless and until such time as the DOE acquires possession of the particular contractor records.

(e) The policies and procedures stated in this Regulation shall be interpreted in a manner that is consistent with the Privacy Act of 1974, 5 U.S.C. 552a (Pub. L. 93–579).

(f) DOE is not required to create a record solely for the purpose of satisfying a request for information.

(g) Except for requests requiring *de minimus* effort, requests will be processed on a first-in, first-out basis.

(h) Requests will be processed according to this Regulation and implementing DOE Order 1700, "Freedom of Information Program."

§ 1004.4 Public reading facilities.

(a) The DOE Headquarters will maintain, in the public reading facilities, the materials which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection and copying. The principal public reading facility will be located at the Freedom of Information Office, 1000 Independence Avenue, SW., Washington, DC. A complete listing of other reading room facilities is available from the Freedom of Information Officer at DOE Headquarters.

(b) Each of the designated field offices below will maintain a public reading facility. See appendix A to this part.

(c) Each of these public reading facilities will maintain and make available for public inspection and copying current indices of the materials at that facility which are required to be indexed by 5 U.S.C. 552(a)(2) or other applicable statutes.

(d) Fees for duplication of documents in a DOE public reading facility will be assessed in accordance with § 1004.10(a)(4). The DOE will charge full allowable duplication costss to all persons when providing records in a public reading facility.

§ 1004.5 Elements of a request.

(a) *Addressed to the Freedom of Information Officer.* A request for a record of the DOE which is not available in a public reading facility, as described in § 1004.4, shall be addressed to the appropriate Freedom of Information Officer, at a location listed in § 1004.2(g) of this part, and both the envelope and the letter shall be clearly marked "Freedom of Information Request." Requests should clearly indicate all other addresses within the Federal Government to whom the request was also sent. This includes DOE field facilities as well as other Federal Agencies. This procedure will reduce processing time and ensure better inter- and intra-agency coordination. Except as provided in § 1004.5(e), a request will be considered to be received by the DOE for purposes of 5 U.S.C. 552(a)(6) upon actual receipt by the appropriate Freedom of Information Officer.

(b) *Request must be in writing and for reasonably described records.* A request for access to records must be submitted in writing and must reasonably describe the records requested to enable DOE personnel to locate them with a reasonable amount of effort. Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester, including the names and titles of any DOE officers or employees who have been contacted regarding the request prior to the submission of a written request. If the records are known to be in a particular office of the DOE, the request should identify that office. If the request relates to a matter in pending litigation, the court and its location should be identified to aid in locating the documents. The Freedom of Information Officer may take into consideration problems of search which are associated with the files of an individual office within the Department of Energy in determining that a request is not one for reasonably described documents as it pertains to that office.

(c) *Categorical requests.* (1) A request for all records falling within a reasonably specific and well-defined category shall be regarded as conforming to the statutory requirement only if the request meets the reasonably described records requirement. Portions of located records that are not responsive to the categorical request may be excluded from further review and processing and need not be released to the requester. The request must enable the DOE to identify and locate the records sought by a process that is not unreasonably burdensome or disruptive of DOE operations.

(2) Assistance in reformulating a non-conforming request. If a request does not reasonably describe the records sought, as specifed in paragraphs (b) and (c)(1) of this section, the DOE response will specify the reasons why the request failed to meet the requirements of paragraphs (b) and (c)(1) of this section. The DOE response will invite the requester to confer with knowledgeable DOE personnel in an attempt to restate the request, and/or reduce the request to manageable proportions by reformulation and/or, to agree on an orderly procedure for the production of the records. If DOE responds that additional information is needed from the requester to render a request reasonably described, any reformulated request submitted by the requester will be treated as an initial request for purposes of calculating the time for DOE response.

(d) *Nonexistent records.* (1) 5 U.S.C. 552 does not require the compilation or creation of a record for the purpose of satisfying a request for records.

(2) 5 U.S.C. 552 does not require the DOE to honor a request for a record not yet in existence, even where such a document may be expected to come into existence at a later time.

(3) If a reasonable search fails to locate records which are responsive to the request, the requester will be so notified.

(e) *Assurance of willingness to pay fees.* A request shall include either (1) an assurance to pay whatever fees will be assessed in accordance with § 1004.10, (2) an assurance to pay fees not exceeding some specified dollar amount, or (3) a specific request and justification for a waiver or reduction of fees. Where the FOI Officer determines or estimates that the fees to be assessed under this section may amount to more than $10.00, the FOI Officer shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the FOI Officer shall advise the requester that the estimated fee may only be a portion of the total fee.) In cases where the requester has been notified that actual or estimated fees may amount to more than $10.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee.

(f) *Requests for records of other agencies.* Some of the records in the files of the DOE have been obtained from other Federal agencies or contain information obtained from or of vital interest to other Federal agencies.

(1) Where a document originated in another Federal agency, the DOE will refer the request to the originating agency and so inform the requester, unless the originator agrees to direct release by DOE.

(2) Requests for DOE records containing information received from another agency, or records prepared jointly by DOE and other agencies, will be treated as requests for DOE records except that the DOE will coordinate with the appropriate official of the other agency. In the event part or all of the record is recommended for denial by the other agency, the response to the requester will cite the other agency Denying Official and the appropriate DOE Denying Official if a denial by DOE is also involved.

§ 1004.6 Processing requests for records.

(a) Freedom of Information Officers will be responsible for processing requests for records submitted pursuant to this part. Upon receiving such a request, the Freedom of Information Officer will, except as provided in paragraph (c) of this section, ascertain which official has responsibility for, custody of, or concern with the records requested. The Freedom of Information Officer will review the request, consulting with the responsible officials where appropriate, to determine its compliance with § 1004.5. Where a request complies with § 1004.5, the Freedom of Information Officer will acknowledge receipt of the request to the requester and forward the request to the appropriate official for action.

(b) The responsible official will ensure prompt identification and review of the records within his/her possession encompassed by the request. A written response will be prepared (1) granting the request, (2) denying the request, (3) granting/denying it in part, (4) replying that the request has been referred to another agency under § 1004.5(f) or § 1004.7(e), (5) informing the requester that responsive records cannot be located or do not exist.

(c) Where a request involves records which are in the custody of or are the concern of more than one official, the Freedom of Information Officer will identify all concerned offices, send copies of the request to them and

forward the request for action to the office that can reasonably be expected to have primary responsibility for the requested records. The Denying Official will prepare a DOE response to the requester, consistent with paragraph (b) of this section, which will identify any other officials having responsibility for the denial of records.

(d) Time for processing requests.

(1) Action pursuant to paragraph (b) of this section will be taken within 10 working days of receipt of a request for DOE records ("receipt" is defined in § 1004.5(a)), except that, if unusual circumstances require an extension of time before a decision on a request can be reached, and the person requesting records is promptly informed in writing by the appropriate official of the reasons for such extension and the date on which a determination is expected to be dispatched, then the Denying Official may take an extension not to exceed 10 working days.

(2) For purposes of this section and § 1004.9(d), the term "unusual circumstances" may include but is not limited to the following:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the offices processing the request;

(ii) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are responsive to a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components of the Department having substantial subject matter interest therein.

(3) The requester must be promptly notified in writing of the extension, the reasons for the extension, and the date on which a determination is expected to be made.

(4) If no determination has been made at the end of the 10-day period, or the last extension thereof, the requester may deem his administrative remedies to have been exhausted, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be made within the applicable time limit, the responsible official will nevertheless continue to process the request. If the DOE is unable to provide a response within the statutory period, the responsible official will inform the requester of the reason for the delay; the date on which a determination may be expected to be made; that the requester can seek remedy through the courts, but asks the requester to forego such action until a determination is made.

(5) Nothing in this part shall preclude the responsible official and a requester from agreeing to an extension of time for the initial determination on a request. Any such agreement will be confirmed in writing and will clearly specify the total time agreed upon.

(6) When an initial request is reformulated according to provisions established under either § 1004.5(c)(2) or § 1004.9(a), the reformulated request will be treated as an initial request for purposes of calculating the time for DOE response.

§ 1004.7 Requests for classified records.

(a) All requests for classified records will be subject to the provisions of this part with the special qualifications noted below.

(b) All requests for records made in accordance with this part, except those requests for access to classified records which are made specifically pursuant to the mandatory review provisions of Executive Order 12356 or any successor thereto, will be automatically considered as a request under the Freedom of Information Act and/or the Privacy Act if applicable.

(c) The Director, Office of Classification is the Denying Official for all portions of records containing DOE classified information requested under the Freedom of Information Act. The Director, Office of Classification may designate the DOE officials as Denying Officials for classified information, subject to conditions in such designation.

(d) Concurrence of the Director Office of Classification, or if appropriate his or her designee, is required on all responses involving requests for classified records. The Director of Classification, or his or her designee, will be informed of the request by the official to whom the action is assigned, and will advise the office originating the records, or having responsibility for the records, and consult with such office or offices as necessary prior to making a determination under this section.

(e) The written notice of a determination to deny records, or portions of records, which contain both classified material and other exempt material, will be concurred in by the Director of Classification, or his or her designee, who will be the Denying Official for the classified portion of such records in accordance with §§ 1004.6(c) and 1004.8(b)(2). If other DOE officials or officials of other agencies are responsible for denying any portion of the record, their names and titles or positions will be listed in the notice of denial in accordance with §§ 1004.6(c) and 1004.8(b)(2) and it will be clearly indicated what portion or portions they were responsible for denying.

(f) Requests for DOE records containing classified information received from another agency, and requests for classified documents originating in another agency, will be coordinated with or referred to the other agency consistent with the provisions of § 1004.5(f). Coordination or referral of information or documents subject to this section will be effected by the Director of Classification (in consultation with the Denying Official) with the appropriate official of the other agency.

§ 1004.8 Responses: Form and content.

(a) *Form of grant.* Records requested pursuant to § 1004.5 will be made available promptly, when they are identified and determined to be nonexempt under the Freedom of Information Act, the Regulation, and where the applicable fees are $10 or less or where it has been determined that the payment of applicable fees should be waived. Where the applicable fees exceed $10, the records may be made available before all charges are paid.

(b) *Form of denial.* A reply denying a request for a record will be in writing. It will name the Denying Official pursuant to § 1104.6 (b) or (c) and will include:

(1) *Reason for denial.* A statement of the reason(s) for denial, containing a reference to the specific exemption(s) under the Freedom of Information Act authorizing the withholding of the record and a brief explanation of how the exemption(s) applies to the record withheld, and a statement of why a discretionary release is not appropriate. Documents being denied will be identified with sufficient particularity to allow a meaningful appeal, but such identification shall not require the specificity of a *Vaughn* index. See *Vaughn* v. *Rosen*, 484 f. 2d 820 (DC Cir. 1973), *cert. denied*, 415 U.S. 977 (1974)

(2) *Person(s) responsible for denial.* A statement setting forth the name and the title or position of each Denying Official and identifying the portion of the denial for which each Denying Official is responsible.

(3) *Segregation of nonexempt material.* A statement or notation addressing the issue of whether there is any segregable nonexempt material in the documents or portions thereof identified as being denied.

(4) *Administrative appeal.* If any DOE information is being denied, a statement that the determination to deny documents may be appealed within 30

calendar days to the DOE, Office of Hearings and Appeals with a copy to the appropriate Freedom of Information Officer will be included in the response. If no DOE information is being denied, this statement shall identify the authority of the agency that is denying the information and the appropriate address where an appeal may be filed.

(c) *Nonexistent records.* If no responsive documents are located in accordance with § 1004.5(d), the requester will be notified that, although such a determination is not a denial, a challenge may be made to the adequacy of the search by appealing within 30 calendar days to the Office of Hearings and Appeals with a copy to the appropriate Freedom of Information Officer.

§ 1004.9 Appeal of initial denials.

(a) *Appeal to Office of Hearings and Appeals.* When the Denying Official has denied a request for records in whole or in part or has responded that there are no documents responsive to the request consistent with § 1004.5(d), or when the Freedom of Information Officer has denied a request for waiver of fees consistent with § 1004.10, the requester may, within 30 calendar days of its receipt, appeal the determination to the Office of Hearings and Appeals with a copy of the appropriate Freedom of Information Officer. The Office of Hearings and Appeals is responsible for processing appeals of denials of DOE records by a DOE Denying Official. The Office of Hearings and Appeals will render a decision based on a review of the original request and any modifications the Denying Official and/or FOI Officer and the requester agreed to make to the request. Nothing in this section will preclude the Office of Hearings and Appeals from conferring with the requester and the Denying Official and/or FOI Officer to clarify previous actions taken. If the Office of Hearings and Appeals remands a request which the appropriate FOI Officer determines to constitute a new request, it shall be treated as an initial request and will be directed to the appropriate FOI Officer for processing. A request that has been reformulated shall not be considered as having been granted on appeal.

(b) *Elements of appeal.* The appeal must be in writing, addressed to the Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 with a copy to the appropriate Freedom of Information Officer. Both the envelope and letter must be clearly marked "Freedom of Information Appeal." The appeal must contain a concise statement of the basis for appeal and a description of the relief sought. It should also include a discussion of all relevant authorities, including, but not limited to, DOE rulings, regulations, interpretations and decisions on appeals and any judicial determinations being relied upon to support the appeal. A copy of the letter containing the determination which is being appealed, and a copy of the initial request, or a statement indicating that the request letter is unavailable, must be submitted with the appeal.

(c) *Receipt of appeal.* An appeal will be considered to be received for purposes of 5 U.S.C. 552(a)(6) upon receipt by the Office of Hearings and Appeals with a copy to the appropriate Freedom of Information Officer. Documents delivered after regular business hours of the Office of Hearings and Appeals and the appropriate Freedom of Information Officer are considered received on the next regular business day.

(d) *Action within 20 working days.* (1) The Office of Hearings and Appeals will act upon the appeal within 20 working days of its receipt, except that if unusual circumstances (as defined in § 1004.6(d)(2)) require an extension of time before a decision on a request can be reached, the Office of Hearings and Appeals may extend the time for final action for an additional 10 working days less the number of days of any statutory extension which may have been taken by the Denying Official during the period of initial determination.

(2) The requester and the appropriate Freedom of Information Officer must be promptly notified in writing of the extension, setting forth the reasons for the extension, and the date on which a determination is expected to be issued.

(3) If no determination on the appeal has been issued at the end of the 20-day period or the last extension thereof, the requester may consider his administrative remedies to be exhausted and seek a review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be issued within the applicable time limit, the appeal will nevertheless continue to be processed; on expiration of the time limit the requester will be informed of the reason for the delay, of the date upon which a determination may be expected to be issued, and of his right to seek judicial review in the United States District Court in the district in which he resides or has his principal place of business, the district in which the records are situated, or the District of Columbia. The requester may be asked to forego judicial review until determination of the appeal.

(4) Nothing in this part will preclude the Office of Hearings and Appeals and a requester from agreeing to an extension of time for the decision on an appeal. Any such agreement will be confirmed in writing by the Office of Hearings and Appeals with a copy to the appropriate Freedom of Information Officer and will clearly specify the total time agreed upon for the appeal decision.

(e) *Form of action on appeal.* The Office of Hearings and Appeals action on an appeal will be in writing and will set forth the reason for the determination. It will also contain a statement that it constitutes final agency action on the request and that judicial review will be available either in the district in which the requester resides or has a principal place of business, the district in which the records are situated, or in the District of Columbia. Documents determined by the Office of Hearings and Appeals to be documents subject to release will be made available to the requester upon payment of any applicable fees.

(f) *Classified records and Unclassified Controlled Nuclear Information.* The Secretary of Energy or his or her designee will make the final determination concerning appeals involving the denial of requests for classified records or the denial of requests for Unclassified Controlled Nuclear Information.

§ 1004.10 Fees for providing records.

(a) *Fees to be charged.* The DOE will charge fees that recoup the full direct costs incurred. The DOE will use the most efficient and least costly methods to comply with requests for documents made under the FOIA. The DOE may contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When doing so, however, the DOE will ensure that the ultimate cost to the requester is no greater than it would be if the DOE itself had performed these tasks. In no case will the DOE contract out responsibilities which the FOIA provides that only the agency may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. Where the DOE can identify documents that are responsive to a request and are maintained for public distribution by other agencies such as the National

Technical Information Service and the Government Printing Office, the Freedom of Information Officer will inform requesters of the procedures to obtain records from those sources.

(1) *Manual searches for records.* Whenever feasible, the DOE will charge for manual searches for records at the salary rate(s) (i.e. basic hourly pay plus 16 percent) of the employee(s) making the search.

(2) *Computer searches for records.* The DOE will change at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records reponsive to a FOIA request and operator/programmer salary.

(3) *Review of records.* The DOE will charge requesters who are seeking documents for commercial use for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges will be assessed only for the initial review (i.e., the review undertaken the first time the DOE analyzes the applicability of a specific exemption to a particular record or portion of a record). The DOE will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The cost for such a subsequent review would be properly assessable.

(4) *Duplication of records.* The DOE will make a per-page charge for paper copy reproduction of documents. At present, the charge for paper to paper copies will be five cents per page and the charge for microform to paper copies will be ten cents per page. For computer generated copies, such as tapes or printouts, the DOE will charge the actual cost, including operator time, for production of the tape or printout. For other methods of reproduction or duplication, the DOE will charge the actual costs of producing the document(s).

(5) *Other charges.* Complying with requests for special services such as these listed below is entirely at the discretion of the DOE. Neither the FOIA nor its fee structure cover these kinds of services. The DOE will recover the full direct costs of providing services such as those enumerated below to the extent that DOE elects to provide them:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc.

(6) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use, according to section (a)(4)(A)(iv) of the Freedom of Information Act, as amended, DOE will provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, DOE will not charge fees to any requester, including commercial use requesters, if the cost of collecting the fee would be equal to or greater than the fee itself. These provisions work together, so that except for commercial use requesters, DOE will not begin to assess fees until the Department has provided the free search and reproduction. For example, if a request involves two hours and ten minutes of search time and results in 105 pages of documents, DOE will determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost is equal to or less than $10.00, the amount DOE incurs to process a fee collection, no charges would be assessed. For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard agency size which is "8½ × 11." Thus, requesters would not be entitled without charge to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction. Similarly, the term "search time" is based on a manual search. To apply this term to searches made by computer, the DOE will determine the hourly cost of operating the computer and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the computer conducting the search, DOE will begin assessing charges for computer search.

(7) *Notification of charges.* If the DOE determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the requester will be informed of the estimated amount of fees, unless the requester has previously indicated a willingness to pay fees as high as those anticipated or the amount estimated by the agency. In cases where a requester has been notified that actual or estimated fees may amount to more than $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to a requester pursuant to this paragraph will offer him the opportunity to confer with DOE personnel in order to reformulate his request to meet his needs at a lower cost.

(8) *Waiving or reducing fees.* The DOE will furnish documents without charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and disclosure is not primarily in the commercial interest of the requester. This fee waiver standard thus sets forth two basic requirements, both of which must be satisfied before fees will be waived or reduced. First, it must be established that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government. Second, it must be established that disclosure of the information is not primarily in the commercial interest of the requester. When these requirements are satisfied, based upon information supplied by a requester or otherwise made known to the DOE, the waiver or reduction of a FOIA fee will be granted. In determining when fees will be waived or reduced the Freedom of Information Officer should address the following two criteria:

(i) That Disclosure of the Information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." Factors to be considered in applying this criteria include but are not limited to:

(A) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(B) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(C) The contribution to an understanding by the general public of the subject likely to result from disclosure; and

(D) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(ii) If Disclosure of the Information "is not primarily in the commercial interest of the requester." Factors to be considered in applying this criteria include but are not limited to:

(A) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(B) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(b) *Fees to be charged—categories of requesters.*—There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Freedom of Information Officer will make determinations regarding categories of requesters as defined at § 1004.2. The Headquarters Freedom of Information officer will assist field Freedom of Information Officers in categorizing requesters, and will resolve conflicting categorizations with the Field Freedom of Information Officers. The FOIA prescribes specific levels of fees for each of these categories:

(1) *Commercial use requesters.*—When the DOE receives a request for documents which appears to be for commercial use, charges will be assessed to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. The DOE will recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records.

(2) *Educational and non-commercial scientific institution requesters.*—The DOE will provide documents to requesters in this category for the cost of reproduction only, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research on behalf of the institution.

(3) *Requesters who are representatives of the news media.*—The DOE will provide documents to requesters in this category for the cost of reproduction only, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 1004.2(n), and his or her request must not be made for either a private or a commercial use. With respect to this class of requesters, a request for records supporting the news dissemination function of the requester will not be considered to be a request for a commercial use.

(4) *All other requesters.*—The DOE will charge requesters who do not fall into any of the above categories fees which recover the full direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. Moreover, requests from individuals, for records about themselves filed in DOE systems of records will continue to be processed under the fee provisions of the Privacy Act of 1974.

(5) *Charging interest—notice and rate.*—Interest will be charged those requesters who fail to pay fees. The DOE will begin to assess interest charges on the unpaid bill on the 31st day following the day on which the billing was sent to the requester. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C. and will accrue from the date of the billing.

(6) *Charges for unsuccessful search.*—The DOE will assess charges for time spent searching even if the search fails to identify responsive records or if records located are determined to be exempt from disclosure. If the DOE estimates that search charges are likely to exceed $25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice will offer the requester the opportunity to confer with agency personnel in order to reformulate the request to reduce the cost of the request.

(7) *Aggregating requests.*—A requester may not file multiple requests each seeking portions of a document or documents, solely to avoid payment of fees. When the DOE reasonably believes that a requester or, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the DOE will aggregate any such requests and charge the appropriate fees. The DOE may consider the time period in which the requests have been made in its determination to aggregate the related requests. In no case will DOE aggregate multiple requests on unrelated subjects from one requester.

(8) *Advance payments.*—Requesters will be required to make an advance payment (i.e., payment before action is commenced or continued on a request) when:

(i) The DOE estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00. In such cases, the DOE will notify the requester of the likely cost and obtain a satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(ii) A requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing). The DOE will require the requester to pay the full amount delinquent plus any applicable interest as provided in paragraph (b)(5) of this section, or demonstrate that he has, in fact, paid the delinquent fee; and to make an advance payment of the full amount of the estimated current fee before the DOE will begin to process a new request or continue to process a pending request from that requester.

(iii) When the DOE acts under paragraphs (b)(8) (i) or (ii) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denials, plus permissible extensions of these time limits) will begin only after the DOE has received fee payments described above.

(c) *Effect of the Debt Collection Act of 1982 (Pub. L. 97–365).* The DOE will use the authorities of the Debt Collection Act, including disclosure to consumer reporting agencies and the use of collection agencies, where appropriate, to encourage payment of fees.

§ 1004.11 Exemptions.

(a) 5 U.S.C. 552 exempts from all of its publication and disclosure requirements nine categories of records which are described in paragraph (b) of that section. These categories include such matters as national defense and foreign policy information; investigatory records; internal procedures and communications; materials exempted from disclosure by other statutes; confidential, commercial, and financial information; and matters involving personal privacy.

(b) Specifically, the exemptions in 5 U.S.C. 552(b) will be applied consistent with § 1004.3(c) of this part to matters that are:

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

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld, for example Restricted Data and Formerly Restricted Data under the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2011 *et seq.*) are covered by this exemption;

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

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;

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

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (i) could reasonably be expected to interfere with enforcement proceedings (ii) would deprive a person of a right to a fair trial or an impartial adjudication, (iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (iv) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a crimnal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (v) would disclosure techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (vi) could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulations or supervision of financial institutions; or

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

(c) Any reasonably segregable non-exempt portion of a record will be provided to a requester. The DOE will delete portions which are withholdable under the exemptions listed above.

§ 1004.12 Handling information of a private business, foreign government, or an international organization.

(a) Whenever a document submitted to the DOE contains information which may be exempt from public disclouse, it will be handled in accordance with the procedures in this section. While the DOE is responsible for making the final determination with regard to the disclosure or nondisclosure of information contained in requested documents, the DOE will consider the submitter's views (as that term is defined in this section) in making its determination. Nothing in this section will preclude the submission of a submitter's views at the time of the submission of the document to which the views relate, or at any other time.

(b) When the DOE may determine, in the course of responding to a Freedom of Information request, not to release information submitted to the DOE (as described in paragraph (a) of this section, and contained in a requested document) without seeking any or further submitter's views, no notice will be given the submitter.

(c) When the DOE, in the course of responding to a Freedom of Information request, cannot make the determination described in paragraph (b) of this section without having the consideration of the submitter's views, the submitter shall be promptly notified and provided an opportunity to submit his views on whether information contained in the requested document (1) is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, (2) contains information referred to in 18 U.S.C. 1905, or (3) is otherwise exempt by law from public disclosure. The DOE will make its own determinations as to whether any information is exempt from disclosure. Notice of a determination by the DOE that a claim of exemption made pursuant to this paragraph is being denied will be given to a person making such a claim no less than seven (7) calendar days prior to intended public disclosure of the information in question. For purposes of this section, notice is deemed to be given when mailed to the submitter at the submitter's last known address.

(d) When the DOE, in the course of responding to a Freedom of Information request, cannot make the determination described in paragraph (b) of this section and, without recourse to paragraph (c) of this section, previously has received the submitter's views, the DOE will consider such submitter's views and will not be required to obtain additional submitter's views under the procedure described in paragraph (c) of this section. The DOE will make its own determination with regard to any claim that information be exempted from disclosure. Notice of the DOE's determination to deny a claims of exemption made pursuant to this paragraph will be given to a person making such a claim no less than seven (7) calendar days prior to its intended public disclosure.

(e) Notwithstanding any other provision of this section, DOE offices may require a person submitting documents containing information that may be exempt by law from mandatory disclosure to (1) submit copies of each document from which information claimed to be confidential has been deleted or (2) require that the submitter's views be otherwise made known at the time of the submission. Notice of a determination by the DOE that a claim of exemption is being denied will be given to a person making such a claim no less than seven (7) calendar days prior to intended public disclosure of the information in question. For purposes of this section, notice is deemed to be given when mailed to the submitter at the submitter's last known address.

(f) *Criteria for determining the applicability of 5 U.S.C. 552(b)(4).* Subject to subsequent decisions of the Office of Hearings and Appeals, criteria to be applied in determining whether information is exempt from mandatory disclosure pursuant to Exemption 4 of the Freedom of Information Act include:

(1) Whether the information has been held in confidence by the person to whom it pertains;

(2) Whether the information is of a type customarily held in confidence by the person to whom it pertains and whether there is a reasonable basis therefor;

(3) Whether the information was transmitted to and received by the Department in confidence;

(4) Whether the information is unavailable in public sources;

(5) Whether disclosure of the information is likely to impair the Government's ability to obtain similar information in the future; and

(6) Whether disclosure of the information is likely to cause substantial harm to the competitive position of the

person from whom the information was obtained.

(g) When the DOE, in the course of responding to a Freedom of Information request, determines that information exempt from the mandatory public disclosure requirements of the Freedom of Information Act is to be released in accordance with § 1004.1, the DOE will notify the submitter of the intended discretionary release no less than seven (7) days prior to intended public disclosure of the information in question.

(h) As used in this section, the term "submitter's views" means, with regard to a document submitted to the DOE, an item-by-item indication, with accompanying explanation, addressing whether the submitter considers the information contained in the document to be exempt from the mandatory public disclosure requirements of the Freedom of Information Act, to be information referred to in 18 U.S.C. 1905, or to be otherwise exempt by law from mandatory public disclosure. The accompanying explanation shall specify the justification for nondisclosure of any information under consideration. If the submitter states that the information comes within the exemption in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, the submitter shall include a statement specifying why such information is privileged or confidential and, where appropriate, shall address the criteria in paragraph (f) of this section. In all cases, the submitter shall address the question of whether or not discretionary disclosure would be in the public interest.

§ 1004.13 Computation of time.

Except as otherwise noted, in computing any period of time prescribed or allowed by this part, the day of the event from which the designated period of time begins to run is not to be included; the last day of the period so computed is to be included; and Saturdays, Sundays, and legal holidays are excepted.

Appendix A to Part 1004—

Locations of Departmental FOI Reading Rooms

DOE Field Office, Albuquerque, U.S. Department of Energy, National Atomic Museum, Building 20358, Wyoming Boulevard, PO Box 5400, Albuquerque, NM 87115, (505) 845–4372

Bartlesville Project Office/National Institute for Petroleum and Energy Research (NIPER) Library, U.S. Department of Energy, 220 N. Virginia Avenue, PO Box 2128, Bartlesville, OK 74003, (918) 337–4371

Boston Support Office, DOE Field Office, Chicago, U.S. Department of Energy, 10 Causeway Street, Rm. 1197, Boston, MA 02222–1035, (617) 565–7703

DOE Field Office, Chicago, 9800 South Cass Avenue, Argonne, IL 60439, (312) 972–2010

Headquarters, U.S. Department of Energy, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020

INEL Technical Library, 1776 Science Center Drive, PO Box 1625, Idaho Falls, ID 83415–1144

Morgantown Energy Technology Center Library, 3610 Collins Ferry Road, PO Box 880, Morgantown, WV 26507–0880, (304) 291–4183

DOE Field Office, Nevada, U.S. Department of Energy, 2753 South Highland Drive, PO Box 98518, Las Vegas, NV 89193–8518, (702) 295–1128

DOE Field Office, Oak Ridge, U.S. Department of Energy, Office of Chief Counsel, 200 Administration Road, PO Box 2001, Oak Ridge, TN 37831–8510, (615) 576–1216

Pittsburgh Energy Technology Center, U.S. Department of Energy, Cochran Mill Road, Bldg. 95, PO Box 10940, Pittsburgh, PA 15236–0940, (412) 892–4751

DOE Field Office, Richland, U.S. Department of Energy, 825 Jadwin Avenue, PO Box 1970, A1–65, Richland, WA 99352, (509) 376–8583

DOE Field Office, Rocky Flats, c/o Front Range Community College, 3645 West 112 Avenue, Westminster, CO 80030, (303) 469–4435

DOE Field Office, San Francisco, Public Reading Room, U.S. Department of Energy, 1333 Broadway, Wells Fargo Building, Oakland, CA 94612

DOE Field Office, Savannah River, Gregg-Granite Library, University of South Carolina-Aiken, 171 University Parkway, Aiken, SC 29801, (803) 725–2889

Southeastern Power Administration, U.S. Department of Energy, Legal Library, Samuel Elbert Building, Public Square, Elberton, GA 30635, (404) 283–9911

[FR Doc. 91–25524 Filed 10–22–91; 8:45 am]

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federal register

Wednesday
October 23, 1991

Part IX

The President

Proclamation 6362—United Nations Day, 1991

Federal Register

Wednesday
October 25, 1972

Part IX

The President

Proclamation 4082—United Nations Day, 1972

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Presidential Documents

Title 3—

The President

Proclamation 6362 of October 21, 1991

United Nations Day, 1991

By the President of the United States of America

A Proclamation

As its Charter states, the United Nations was envisioned "to save succeeding generations from the scourge of war . . . to reaffirm faith in fundamental human rights . . . in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom." Today the United Nations has an opportunity unparalleled in its 46-year history to fulfill the promise of its Charter.

In the past year, the United Nations has played a dramatic role in repelling aggression and vindicating the right of all states to live in peace. Indeed, it has proved that it can be an effective vehicle for promoting international cooperation and security. During the crisis in the Gulf, the U.N. condemned Iraqi aggression and took necessary and proportional steps to ensure peace and security in the region. It has also demonstrated exemplary compassion in addressing the human tragedy wrought by Iraq's invasion of Kuwait, the ensuing armed conflict, and subsequent Iraqi actions against its own citizens.

Today we know that, with the building of consensus and cooperation among its members, the United Nations can meet serious and sudden challenges to international peace. However, universal respect for human rights, as well as the long-term social and economic development of nations, are Charter aims that go hand in hand with the larger goal of lasting world peace. Thus the United Nations and its specialized agencies must continue working to overcome repression, poverty, illiteracy, and other persistent barriers to human freedom and progress.

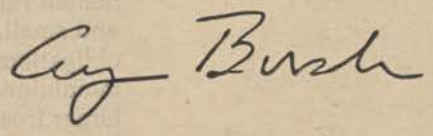
Many people are aware of the United Nations' role in peacekeeping and in coordinating international humanitarian relief efforts. However, the United Nations is also playing an increasingly visible and important role in the fight against illicit drug use and drug trafficking. In 1987, the Secretary General convened a global conference on these subjects. One year later, the United States and other countries joined in negotiating the U.N. Convention Against Illicit Drug Trafficking in Narcotic Drugs and Psychotropic Substances. We have urged all signatories to ratify this treaty.

The United States will also continue to support global environmental protection efforts through the United Nations. Established in 1972, the United Nations Environment Program (UNEP) has an important role to play as humankind strives to reconcile legitimate needs for economic development with the need to preserve our planet's fragile ecosystem. During the past two decades, UNEP has been collecting widely sought information on the most effective means of conducting environmental impact assessments. As we prepare for the 1992 Conference on Environment and Development, UNEP should continue to serve as a central forum for the study and development of related policies and programs.

By facilitating international cooperation on issues ranging from the environment and drug interdiction to war and peace, human rights, development, and humanitarian concerns, the United Nations and its specialized agencies are helping to shape the world of tomorrow. The United States is pleased to note that seven new members have recently joined the United Nations, and we look forward to continuing progress in the year ahead.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 24, 1991, as United Nations Day. I invite all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of October, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2387/Pub. L. 102–130
Striped Bass Act of 1991. (Oct. 17, 1991; 105 Stat. 626; 2 pages) Price: $1.00

H.J. Res. 303/Pub. L. 102–131
To designate October 1991 as "Crime Prevention Month". (Oct. 17, 1991; 105 Stat. 628; 2 pages) Price: $1.00

H.R. 3259/Pub. L. 102–132
To authorize appropriations for drug abuse education and prevention programs relating to youth gangs and to runaway and homeless youth; and for other purposes. (Oct.

18, 1991; 105 Stat. 630; 2 pages) Price: $1.00

S.J. Res. 107/Pub. L. 102-133

To designate October 15, 1991, as "National Law Enforcement Memorial Dedication Day". (Oct. 18, 1991; 105 Stat. 632; 1 page) Price: $1.00

Last List October 18, 1991

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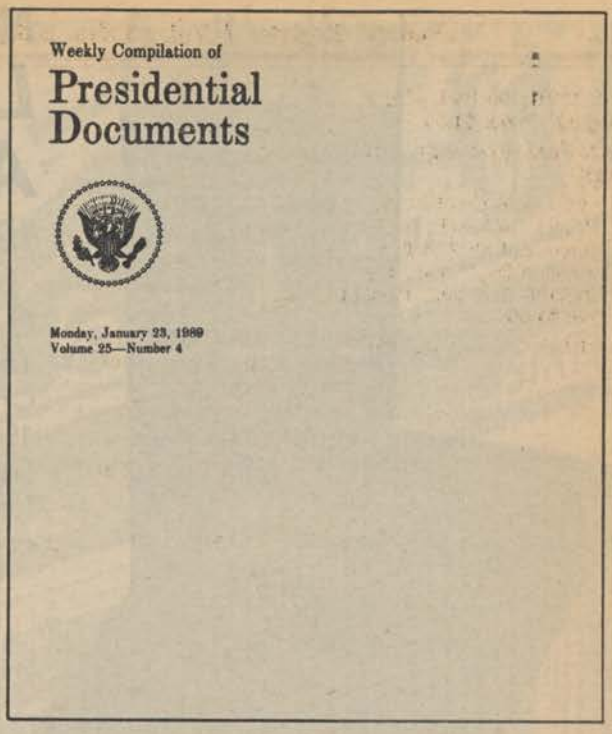

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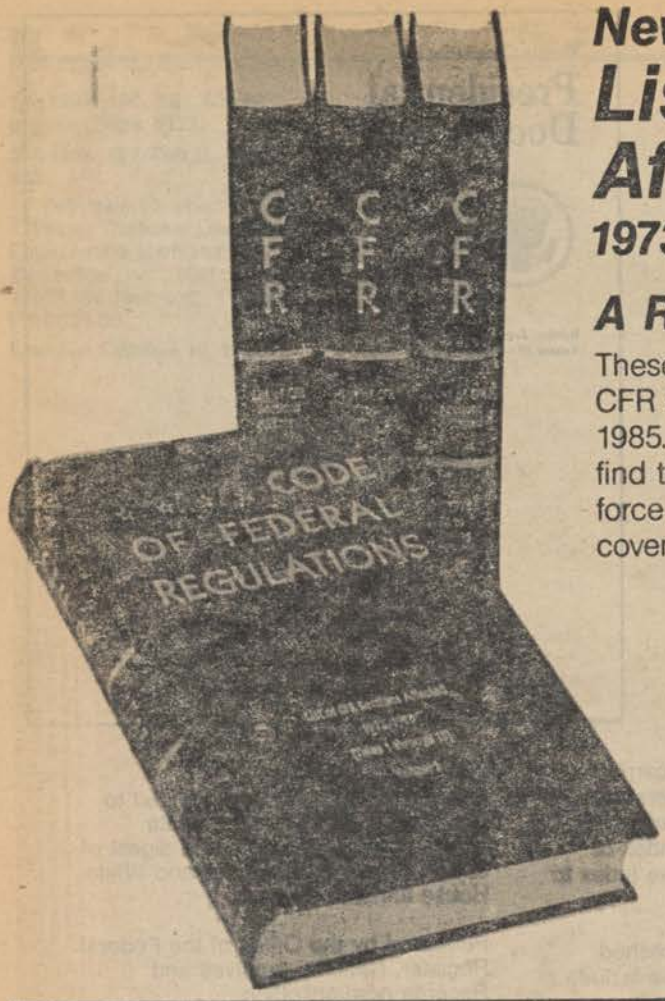

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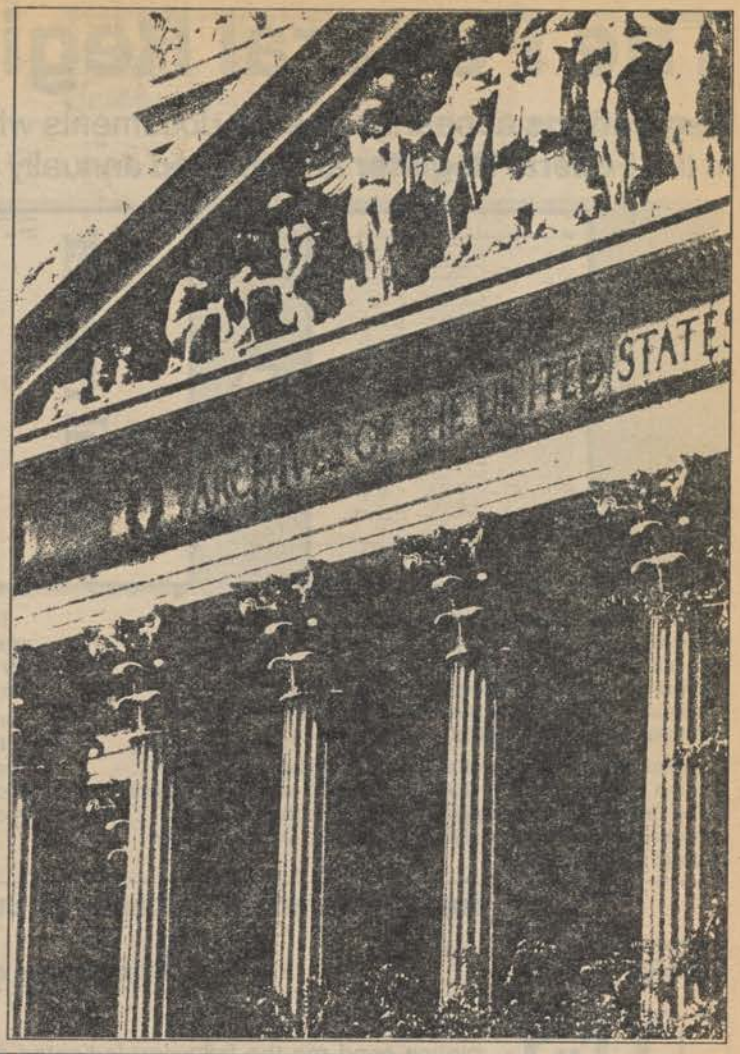

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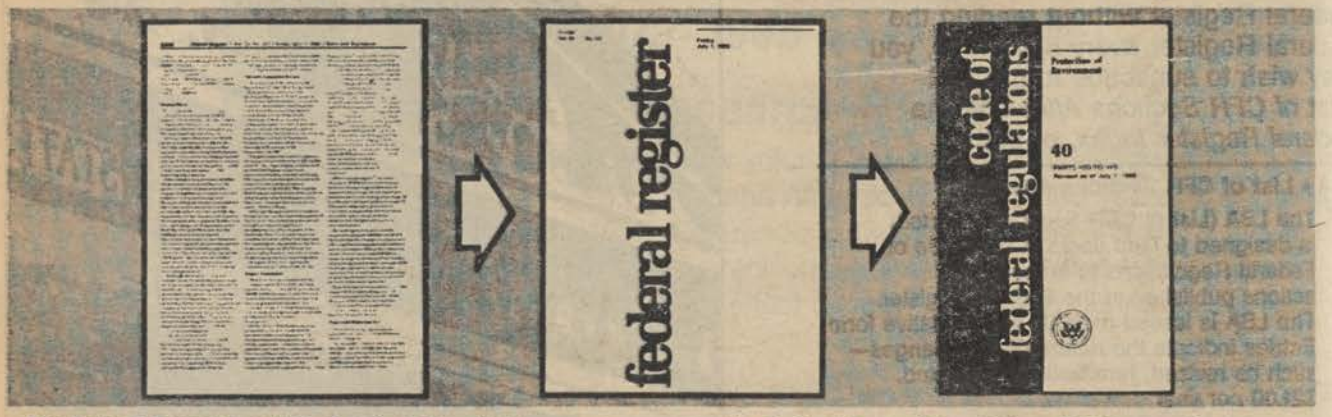

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